
In the
Supreme Court of the United States

GEOFFREY ANDERSON, ET AL.,
Petitioners,

v.
CITY OF ATLANTA, GEORGIA,
Respondent.

On Petition for a Writ of Certiorari to the
United States Court of Appeals for the
Eleventh Circuit

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

In *Reed v. Town of Gilbert*, this Court held that a sign regulation is content based if it applies to particular speech because of its topic or message. 576 U.S. 155 (2015). In *City of Austin v. Reagan National Advertising of Austin, LLC*, the Court held that a rule distinguishing on-premises from off-premises signs is content neutral because it draws “neutral, location-based lines” that are “agnostic as to content.” 596 U.S. 61, 69 (2022).

The Third and Sixth Circuits hold that a sign code that applies its off-premises restriction to some subjects but exempts others is content based. The Eleventh Circuit held the opposite. And it reached that question on its own: the City stipulated below that its sign code was content based, and on appeal challenged the judgment solely on mootness.

The questions presented are:

1. Whether a sign ordinance that restricts off-premises signs about some subjects, but not others, is content based and subject to strict scrutiny.
2. Whether a court of appeals abuses its discretion under the party-presentation principle of *United States v. Sineneng-Smith*, 590 U.S. 371 (2020), when it *sua sponte* raises and decides a dispositive issue that the City stipulated below and did not raise on appeal.

PARTIES TO THE PROCEEDING

Petitioners are Multimedia Technologies, Inc. and Geoffrey Anderson, which were Appellees before the United States Court of Appeals for the Eleventh Circuit.

Respondent is the City of Atlanta, Georgia, which was the Appellant before the United States Court of Appeals for the Eleventh Circuit.

Pursuant to Rule 12.6, the following party was also an Appellee before the United States Court of Appeals for the Eleventh Circuit but has not elected to seek certiorari, and therefore Petitioners believe that it has no interest in the outcome of this petition: Peach Hospitality of Georgia, LLC.

RULE 29.6 DISCLOSURE STATEMENT

Petitioner Multimedia Technologies, Inc., is a privately held company organized under the laws of the State of Georgia. It has no parent company and no publicly held company owns more than 10% of its stock.

Further, Plaintiff-Appellee Peach Hospitality of Georgia, LLC (not a petitioner here) is a privately held company organized under the laws of the State of Georgia. It has no parent company and no publicly held company owns more than 10% of its stock.

RELATED PROCEEDINGS

United States District Court for the Northern District
of Georgia:

*Multimedia Technologies, Inc., et al. v. City of At-
lanta, Ga.*, 1:21-CV-01280-VMC (N.D. Ga. Sept.
24, 2024)

United States Court of Appeals for the Eleventh Cir-
cuit:

Multimedia Technologies, Inc. v. City of Atlanta,
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PETITION FOR WRIT OF CERTIORARI

Petitioners Multimedia Technologies, Inc. and Geoffrey Anderson respectfully petition for a writ of certiorari to review the judgment of the United States Court of Appeals for the Eleventh Circuit in this case.

INTRODUCTION

This case presents a circuit split at the intersection of this Court’s First Amendment sign-code cases. In *Reed v. Town of Gilbert*, this Court held that a sign ordinance is content based, and thus subject to strict scrutiny, when its application turns on the topic discussed or the message expressed. 576 U.S. 155 (2015). *City of Austin v. Reagan National Advertising of Austin, LLC* clarified that “neutral, location-based lines,” like simple on-/off-premises distinctions, do not qualify as content based. 596 U.S. 61, 69 (2022).

But what if the sign code applies the on-/off-premises distinction only to some types of speech but not others? What if some types of off-premises speech are prohibited, but others are allowed?

That is the first question presented by this case. Atlanta’s 1982 Sign Code prohibits “general advertising signs” within 300 feet of any interstate. Pet. App. 64a. The Code defines a “general advertising sign” as one “directing attention to a business, profession, product, service, activity, accommodation, attraction or entertainment” not located on the premises where the sign appears. *Id.*, at 60a. An off-site sign about anything else—a person, an ideological message, or weather information—is not a “general advertising sign,” and the buffer does not apply to it. Whether the Code reaches any particular off-site sign thus depends on what the sign says.

The Third and Sixth Circuits hold that this sort of locational gerrymandering is subject to strict scrutiny. *Camp Hill Borough Republican Ass’n v. Borough of Camp Hill*, 101 F.4th 266, 269 (3d Cir. 2024) ; *Norton Outdoor Advert., Inc. v. Village of St. Bernard*, 99 F.4th 840, 849–51 (6th Cir. 2024) . Yet in this case, the Eleventh Circuit held that it is not. *See Multimedia Technologies, Inc. v. City of Atlanta*, 172 F.4th 1286, 1290–91 (11th Cir. 2026); Pet. App. 7a–9a.

The Eleventh Circuit split with those circuits by holding that Atlanta’s sign code is content neutral simply because, per *Reagan*, it draws an on-/off-premises line—despite the fact that it “does not apply to signs advertising ‘persons[.]’” Pet. App. 8a–9a. But that goes well beyond what this Court said in *Reagan*, where the Austin ordinance at issue there reached *every* off-site subject. *See Reagan*, 596 U.S. at 66. And it threatens great mischief for the countless Americans who wish to speak through signs by requiring enforcement officials not merely to determine whether the sign advertises something on-premises or not, but also what *sort* of message an off-premises sign conveys.

This Court should step in and resolve the split. Many jurisdictions have continued to “roll[] the dice on [] on-premises/off-premises” distinctions following *Reed*. Tr. of Oral Arg. 78, *City of Austin v. Reagan Nat’l Advert. of Austin, LLC*, 596 U.S. 61 (2022) (No. 20-1029) (Statement of Kavanaugh, J.); *see also id.*, at 79 (Statement of Gorsuch, J.). Without this Court’s intervention, *Reagan*’s blessing of on-/off-premises lines will become a Trojan horse for smuggling content-based regulations back into our law.

Failing that, this Court should grant the petition, vacate the judgment below, and remand under *United*

States v. Sineneng-Smith, 590 U.S. 371, 376 (2020). The Eleventh Circuit reached out and decided the first question presented despite the fact that the City of Atlanta *never* argued that its 1982 Sign Code was content neutral—only that the case was supposedly moot. To the contrary, the first time *Reagan*’s on-/off-premises holding was invoked was in a notice issued by the Eleventh Circuit shortly before oral argument. *Sineneng-Smith* made clear, in strikingly similar circumstances, that courts redirecting litigation in this way violate fundamental party-presentation principles. The Eleventh Circuit did so anyway on the assumption that the resolution of the first question presented was beyond any doubt. Since (as this petition shows) that is clearly *not* the case, this Court can and should grant, vacate, and remand—even if it determines that the time has not yet come to decide the first question presented on the merits.

OPINIONS BELOW

The opinion of the United States Court of Appeals for the Eleventh Circuit is reported at 172 F.4th 1286. The court of appeals’ order denying rehearing (Pet. App. 49a-50a) is unreported. The decision of the district court is unreported but is available at 2024 WL 4763070.

JURISDICTION

The judgment of the United States Court of Appeals for the Eleventh Circuit was entered on April 15, 2026. Petitioners’ petitions for panel rehearing and rehearing en banc were denied on June 10, 2026. *See* Pet. App. 49a; S. Ct. R. 13.3. On July 17, 2026, Justice Thomas extended the time to file this petition to and including October 8, 2026 (No. 26A72). This Court has jurisdiction under 28 U.S.C. § 1254(1).

CONSTITUTIONAL, STATUTORY, AND ORDINANCE PROVISIONS INVOLVED

The First Amendment to the United States Constitution provides, in relevant part: “Congress shall make no law ... abridging the freedom of speech[.]” U.S. Const. amend. I; Pet. App. 55a.

Section 16-28.019(7) of Atlanta’s 1982 Zoning Ordinance provides, in relevant part: “[I]t shall be unlawful for any person to build, use or maintain, within a distance of 300 feet of the nearest outer edge of the pavement of the interstate highway, limited-access freeway or expressway system within the city, any general advertising sign[.]” Pet. App. 64a.

Section 16-28.017(1) defines a “sign” as “[a]ny name, identification, description, display, illustration or device which is affixed to or represented directly or indirectly upon a building, structure or land in view of the general public and which directs attention to a product, place, activity, *person*, institution or business.” Pet. App. 59a (emphasis added).

Section 16-28.017(3)(b) defines a “[g]eneral advertising sign; off-site sign” as “[a] sign which is for the purpose of directing attention to a business, profession, product, service, activity, accommodation, attraction or entertainment not principally conducted, sold or offered on the premises.” Pet. App. 60a.

The pertinent text of these and the other provisions discussed in this petition is reproduced at Pet. App. 55a–87a. That includes the remaining provisions of the 1982 Sign Code, § 16-28A.004 of the Atlanta Code of Ordinances, 23 U.S.C. § 131, and the ordinances of other jurisdictions.

STATEMENT OF THE CASE

I. Factual Background

Petitioner Multimedia Technologies, Inc. owns a Wall Sign and a Rooftop Sign (collectively, the “Subject Signs”) located at 1655 Peachtree Street, N.E., Atlanta, Georgia (the “Property”).¹

At the time the Subject Signs were permitted in 1993, they were subject to the 1982 Atlanta Zoning Ordinance (in relevant part, the “1982 Sign Code”), which generally required signs to be permitted before they can be erected. Pet. App. 60a–61a. But the 1982 Sign Code exempted “campaign signs,” “[m]emorial signs,” and “[b]ulletin boards,” the definitions of which are unquestionably content based. *Id.*, at 61a–62a; *see also id.*, at 2a (“The definitions of the exempted signs were content-based.”).

The 1982 Sign Code defines a “sign” as “[a]ny name, identification, description, display, illustration or device” affixed to a building or land “which directs attention to a product, place, activity, *person*, institution or business.” *Id.*, at 59a (emphasis added). Displays that contain ideological messages or religious messages are not covered by this definition and are not regulated under the Code. However, signs about persons—including political candidates—are encompassed by the Code.

“A separate provision, section 16-28.019(7), limited construction of” certain signs, called “general advertising sign[s]” or off-site signs, “near freeways [and] expressways.” *Id.*, at 2a (internal quotation marks

¹ Peach Hospitality of Georgia, LLC, which was a plaintiff below, owned the Property.

omitted). Such signs are defined as signs “directing attention to a business, profession, product, service, activity, accommodation, attraction or entertainment not principally conducted, sold or offered on the premises.” *Id.* (internal quotation marks omitted). Notably absent from this definition is the word “person”—a category of speech that *is* included in the definition of “sign” generally.

The original permits for the Subject Signs were issued by the City on or around May 27, 1993. *Id.*, at 27a. The Subject Signs were erected in compliance with those permits, and they have been part of the Atlanta skyline ever since. In the years since, the City has issued additional permits for the Subject Signs at least 15 times. Pet. App. 28a.

In June 2015, this Court issued its decision in *Reed v. Town of Gilbert*, 576 U.S. 155. The Court held that the Town of Gilbert’s sign code was “content based on its face” and could not survive strict scrutiny. *Id.*, at 159, 164.

After *Reed*, the City of Atlanta, like many cities nationwide, amended its sign ordinance. The City adopted Ordinance 15-O-1394 (the “2015 Ordinance”) for the express purpose of aligning with this Court’s decision in *Reed*. Pet. App. 28a.

The 2015 Ordinance defined the term “Nonconforming Sign” as “[a] sign that was lawfully erected prior to the adoption of this chapter and does not conform to the requirements of this chapter or other provisions of part 16.” *Id.*, at 29a (internal quotation marks omitted). And the 2015 Ordinance allows the owner of a nonconforming sign to keep it in use as long as the owner continually maintains it. *Id.* Since 2015,

Multimedia has maintained its signs under this exception.

In December 2018, Multimedia submitted permit applications to upgrade the sign-changing technology for the Subject Signs. *Id.*, at 3a, 29a. The City issued conversion permits approving the upgrades a few months later. *Id.*

Several nonparties then challenged the conversion permits. *Id.*, at 3a. The Superior Court of Fulton County reversed the conversion permits, holding that the 2019 conversion permits were “wrongly issued” because the Subject Signs were not lawfully permitted under the 1982 Sign Code. *Id.*, at 30a. But the superior court did not set aside the original permits or order the Subject Signs to be removed. *Id.*, at 30a–31a, 39a.

Following the superior court’s order, the City of Atlanta Department of City Planning Office of Buildings ordered Petitioners to remove the Subject Signs. *Id.*, at 31a. When Petitioners sought to negotiate, the City issued arrest citations to Petitioner Anderson—the President of Multimedia, the Subject Signs’ owner—and Peach Hospitality’s registered agent. *Id.* The citations listed the alleged violations as “illegal signs” against section 16-28A.013(a)(ii), the “1982 Atlanta Zoning Ordinance,” and “Chapter 28A.” *Id.*

II. Procedural History

Petitioners and Peach Hospitality filed this lawsuit in March 2021. Petitioners argued that the 1982 Sign Code violates the First Amendment facially and as applied to the enforcement actions against Petitioners. Pet. App. 4a. In particular, Petitioners argued that the 1982 Sign Code—which requires signs to be permitted—violates the First Amendment because it

contains numerous content-based exemptions from the permit requirement.

At the district court, the City never disputed that the 1982 Sign Code was content based. *See generally* D. Ct. Doc. 38. Instead, the City ultimately opposed Petitioners' claim on a single ground: that Petitioners' claim was moot.

Eventually,² the district court granted summary judgment to Petitioners, holding that the 1982 Sign Code is content based and that the City had not attempted to satisfy strict scrutiny, and enjoining enforcement against Petitioners. Pet. App. 18a. In doing so, the district court rejected the City's argument that Petitioners' challenge to the 1982 Sign Code was moot because the 2015 Ordinance replaced the 1982 Sign Code. *Id.* Instead, the district court explained, "the 2015 Ordinance incorporates prior law by reference for the purpose of determining whether a sign is a non-conforming sign[.]" *Id.* Accordingly, the district court declared the 1982 Sign Code unconstitutional and permanently enjoined the City from enforcing it or taking any action under it against Petitioners. *Id.*, at 19a, 21a–22a.

On appeal, the City did not defend the 1982 Sign Code on the merits, let alone argue that any provision

² The district court initially (and *sua sponte*) granted summary judgment to the City against Multimedia on the ground that Multimedia's claims were barred by the *Rooker-Feldman* doctrine. Pet. App. 34a–46a. Petitioners asked the court to reconsider that decision and the district court agreed that its previous ruling "was wrong when issued." *Id.*, at 16a. The City never opposed that motion.

was content neutral in its brief. Its sole challenge to the district court's judgment was that Petitioners' claims were moot because of the enactment of the 2015 Ordinance. *See generally* C.A. Docs. 17, 24.

After briefing closed, however, a panel of the Eleventh Circuit *sua sponte* directed the parties to address at oral argument whether the 1982 Sign Code's § 16-28.019(7)—viewed in isolation—is content neutral under *Reagan*. Pet. App. 52a. Following oral argument and supplemental briefing, the panel adopted its own theory of the case.

The panel acknowledged that “Atlanta had made no effort” to defend the constitutionality of the 1982 Sign Code, with its only argument being “that the challenge was moot because the 1982 sign code had been fully replaced by the 2015 code.” *Id.*, at 5a. Nonetheless, the panel said, “[t]his appeal requires the straightforward application of the First Amendment to a municipal sign ordinance,” concluding that “the relevant provision of the sign code is content-neutral[.]” *Id.*, at 1a–2a.

In fact, the panel opined, “[t]he district court also erred in accepting the parties’ stipulation that the provisions of the 1982 sign code applied to Multimedia were content-based.” *Id.*, at 7a. The panel believed that the general advertising/off-site sign provisions were content neutral “beyond any doubt” under *Reagan, id.* (quotation omitted), such that the panel could exercise its discretion to consider even this clearly forfeited issue, “[e]ven assuming that subsection (7) does not apply to signs advertising ‘persons,’” *id.*, at 8a.

Thus, the panel held that the district court had erred in applying strict scrutiny, and remanded for

reconsideration under intermediate scrutiny instead. *Id.*, at 9a. Petitioners sought rehearing by the panel and en banc. But the Eleventh Circuit denied rehearing on June 10, 2026. *Id.*, at 50a.

Petitioners then sought and obtained an extension to seek this Court’s review. *See* Case No. 26A72. This petition follows.

REASONS FOR GRANTING THE PETITION

The first question presented here involves a circuit split on the true meaning of *Reed* and *Reagan*. Properly understood, *Reagan* did not abrogate *Reed*, or even bless all sign code provisions that happen to invoke an on-/off-premises line. An ordinance that regulates by reference to the content of a sign is content based, even if it happens to embed content-based distinctions into the definition of on-/off-premises signs. Atlanta’s 1982 Sign Code is a perfect example. In nonetheless finding the 1982 Sign Code content neutral, the Eleventh Circuit not only drastically overread *Reagan*, it split with decisions of the Third and Sixth Circuits on the same core issue. And while the first question presented is plainly important, since many municipalities’ sign codes around the country resemble Atlanta’s 1982 Sign Code, granting review here would not disturb the many statutes and ordinances that properly implement true location-based sign regulations.

But, if the time is not yet right to review this issue on the merits, this Court could also avoid confusion in the law by granting, vacating, and remanding under *Sineneng-Smith*. The Eleventh Circuit created this circuit split by *sua sponte* reframing the case the parties had litigated. If the Ninth Circuit abused its

discretion in *Sineneng-Smith*, then the Eleventh Circuit did so here.

Either way, this petition should be granted.

I. This Court should grant certiorari to clarify that a sign code restriction is content based if it purports to draw an on-/off-premises line with reference to the underlying content of the sign.

A. *Reagan* does not immunize all off-premises sign regulations; regulations must still be “agnostic as to content.”

In *Reed*, this Court held that “[g]overnment regulation of speech is content based if a law applies to particular speech because of the topic discussed or the idea or message expressed.” 576 U.S. at 163. *Reagan* confirmed that rule. 596 U.S. at 69.

The Town of Gilbert’s sign code in *Reed*, for example, identified “various categories of signs based on the type of information they convey” and applied different restrictions to each. 576 U.S. at 159. Ideological signs received the most favorable treatment; political signs received less favorable treatment; temporary directional signs about “qualifying event[s]” received the least favorable treatment. *Id.*, at 159–61 (internal quotation marks omitted). Because the code’s “restrictions ... depend[ed] entirely on the communicative content of the sign,” it was facially content based. *Id.*, at 164.

Reagan did not retreat from *Reed*; it merely rejected one “extreme” reading of it. 596 U.S. at 69; see also *TikTok Inc. v. Garland*, 604 U.S. 56, 70 (2025) (applying *Reed* post-*Reagan*). Specifically, *Reagan* rejected the view that a regulation was content based

simply because it required an enforcement officer to read the sign, observing that “restrictions on speech may require some evaluation of the speech and nonetheless remain content neutral.” 596 U.S. at 72. So, an ordinance distinguishing on-premises from off-premises signs was content neutral because “the City’s off-premises distinction require[d] an examination of speech only in service of drawing neutral, location-based lines. It is agnostic as to content.” *Id.*, at 69.

The structure of Austin’s code, not the mere label “off-premises,” supplied the basis for that holding. Austin defined “off-premise sign” to include “a sign advertising a business, person, activity, goods, products, or services not located on the site where the sign is installed, or that directs persons to any location not on that site.” Austin, Tex., City Code § 25-10-3(11) (2016) (quoted at 596 U.S. at 66). That definition reached every off-site subject—including, expressly, a “person.” *Id.*

This Court treated the locational element as a binary: a sign was either off-site or it was on-site. There was no third category of unregulated speech. *See Reagan*, 596 U.S. at 66, 72–73. Because every off-site subject was treated alike, “[a] sign’s substantive message itself [was] irrelevant to the application of the provisions; there [were] no content-discriminatory classifications for political messages, ideological messages, or directional messages concerning specific events[.]” *Id.*, at 71. Only in that scheme could the Court say that “[t]he message on the sign matters only to the extent that it informs the sign’s relative location.” *Id.*

In other words, *Reagan* clarified that an on-/off-premises distinction is agnostic as to content only when the sign’s location, and nothing else about the

content of the sign, determines its treatment. *Id.*; see also *id.*, at 84 n.1 (Alito, J., concurring in the judgment in part and dissenting in part) (“In ordinary usage, a sign that is attached to or located in close proximity to a building is not described as located ‘off-premises.’ The distinction between on- and off-premises signs is based *solely* on location, and that is why such a classification is not content-based.” (emphasis added)).³

B. Atlanta’s 1982 Sign Code is content-based because it restricts only certain types of off-premises speech.

Atlanta’s 1982 Sign Code does not work that way. It restricts only those off-site signs that direct attention to a “business, profession, product, service, activity, accommodation, attraction or entertainment”—it exempts off-site signs about persons, ideological messages, weather information, and other non-place-bound subjects. That is not a location-based rule that is “agnostic as to content[.]” *Reagan*, 596 U.S. at 69. It is instead content based in two ways and, thus, *Reed* controls.

First, the 1982 Sign Code only regulates signs conveying certain categories of speech, leaving others unregulated. For a sign to even qualify as a regulated “sign” subject to the 1982 Sign Code in the first place, the sign must “direct[] attention to a product, place,

³ Indeed, the dissent agreed with that point: “although off-premises ... rules *could* be drafted in terms of a sign’s communicative content ... they need not be. There might be many formulations of an on-/off-premises distinction that are content neutral.” *Reagan*, 596 U.S. at 99–100 (Thomas, J., dissenting) (emphasis in original) (quoting *Thomas v. Bright*, 937 F.3d 721, 733 (6th Cir. 2019)).

activity, person, institution or business.” Pet. App. 59a. If a sign directs attention to something else—*e.g.*, ideological statements, religious declarations, holiday messages, weather and temperature information, etc.—then it does not even qualify as a “sign” and is not regulated at all.

Second, even within the world of regulated “signs,” the 1982 Sign Code exempts signs about a “person” from its off-site restrictions. A sign is a “general advertising sign”—and therefore subject to § 16-28.019(7)’s 300-foot freeway buffer—only if it directs attention to a “business, profession, product, service, activity, accommodation, attraction or entertainment not principally conducted, sold or offered on the premises.” *Id.*, at 60a, 64a. Notably absent from that list is any mention of signs about a “person”—despite such signs being explicitly covered by the general definition of a “sign.”

That structure poses content-driven questions before the Code reaches any question about location. For one, is the display a regulated “sign” at all? An ideological sign is not. For another, even among the items defined as “signs,” is a given display a “general advertising sign”? A sign endorsing a political candidate is not. Only after both subject-matter inquiries are resolved against the speaker does the Code ask the location question *Reagan* permits.

Consider a few examples. A sign saying “Repent and be saved!” is allowed, but a sign saying “Repent and be saved! Join us on Sundays at our church down the street” is not. A billboard touting a charity gala is prohibited; a billboard advocating for a political candidate or idea is not. A billboard advertising a weather service is prohibited; a billboard displaying the current weather is not.

All of these are literally off-site signs—none of them advertise or direct attention to something occurring on premises. *See Reagan*, 596 U.S. at 84 n.1 (Alito, J., concurring in the judgment in part and dissenting in part) (“a sign that is attached to or located in close proximity to a building” is an on-premises sign). And yet, under the 1982 Sign Code’s scheme, some are allowed, while others are not. The message on the sign matters for more than its location—exactly the feature that distinguished the *Reed* code from the *Reagan* code. *Id.*, at 71 (citing 576 U.S. at 164–65). That is far more than this Court blessed in *Reagan*, where “enforcing the City’s challenged sign code provisions [merely] require[d] reading a billboard to determine whether it *directs readers to the property on which it stands*” or not. *Id.* (emphasis added); *see also id.* (“A given sign is treated differently based solely on whether it is located on the same premises as the thing being discussed or not.”).

Indeed, far from “[t]he message” mattering “only to the extent that it informs the sign’s relative location,” as in *Reagan*, Atlanta’s sign code demonstrably “single[s] out” some “topic[s] or subject matters” for better and worse treatment—just like in *Reed*. *Id.*

C. The Eleventh Circuit’s contrary decision is wrong.

The Eleventh Circuit held otherwise, and so transformed *Reagan*’s recognition that “neutral, location-based lines” survive *Reed* into a categorical safe harbor for any ordinance that distinguishes, in some way, between on- and off-premises signs. It did so in just one inferential step. It “assum[ed] that subsection (7) does not apply to signs advertising ‘persons,’” yet nevertheless concluded that § 16-28.019(7) “do[es] not

single out any topic or subject matter for differential treatment.” Pet. App. 8a–9a (quoting *Reagan*, 596 U.S. at 71).

But that conclusion does not follow from the premise. The very fact that § 16-28.019(7) does not reach a sign about a “person” is the topic-based distinction. To call an ordinance that reaches activities and attractions, but not persons or ideas, “agnostic as to content,” *Reagan*, 596 U.S. at 69, empties the standard of meaning.

The Eleventh Circuit’s rule also cannot be squared with *Reed*’s holding that favoring ideological speech over event-based speech is “a paradigmatic example of content-based discrimination[.]” 576 U.S. at 169. The Town of Gilbert’s ordinance regulated all three categories of speech under different restrictions; Atlanta’s ordinance does not regulate ideological signs at all, exempts signs about persons including political candidates, and reserves its 300-foot freeway buffer exclusively for “general advertising signs.” Atlanta’s 1982 Sign Code is, if anything, even more underinclusive than the ordinance struck down in *Reed*.

Because the 1982 Sign Code draws lines based on “the topic discussed or the idea or message expressed,” *Reed* and *Reagan* dictate that strict scrutiny apply. *Reed*, 576 U.S. at 163; *Reagan*, 596 U.S. at 69. The Eleventh Circuit was wrong to hold otherwise.

D. Circuits are split on this question.

That erroneous decision below now creates a conflict in the lower courts, further demonstrating the need for this Court’s review. The Third and Sixth Circuits have addressed the first question presented in similar contexts and both have held that strict

scrutiny applies. *Camp Hill*, 101 F.4th at 268–71; *Norton*, 99 F.4th at 846–51.

In *Norton*, the Sixth Circuit confronted a sign code materially indistinguishable from Atlanta’s 1982 Sign Code: it drew a basic on-/off-premises line but exempted certain off-site subjects pursuant to a public-service exemption. 99 F.4th at 842–43. The Village of St. Bernard regulated “outdoor advertising sign[s],” but exempted “[s]igns primarily intended to promote” goods, services, or events on-premises; public traffic signs; signs on property for sale; and “[p]ublic service signs which disclose information such as time or weather.” *Id.*, at 843, 848.

The Sixth Circuit held that this kind of regulation “resists classification under either” *Reed* or *Reagan*. *Id.*, at 848. The court acknowledged that “much of the work of [the statute] is accomplished in an entirely content-neutral way: by simply inquiring whether a sign pertains to activities on- or off-premises.” *Id.*, at 850. But that did not save it. “[T]he Village must then go further when implementing the ordinances, by inquiring into whether the content displayed on an off-premises sign meets the criteria of the public-service exemption.” *Id.* And that inquiry “cannot be done in a content-neutral fashion.” *Id.*

To illustrate the point, the Sixth Circuit walked through a series of hypotheticals showing how the public-service exemption produced arbitrary, content-based results. Under the Village’s ordinance, “[a] private individual or company could operate a variable-message sign to encourage drivers not to litter, but likely could not do the same to encourage the citizens of the Village to attend the high school softball game (an ‘event’).” *Id.* “[A] ‘click it or ticket’ message encouraging seat-belt use could be displayed on changing

digital billboards, but not a message encouraging citizens to be familiar with the proper uses for naloxone (a ‘good’ or ‘product’).” *Id.* “And a public-health organization might be able to post a flashing sign encouraging drivers to stay up to date on their vaccines, but the local pharmacy may be barred from doing so by encouraging drivers to receive the flu shot at its closest location.” *Id.* Each pair involved structurally identical signs at structurally identical locations; only the message differed; and only one was permitted. That, the court held, was the kind of “content-based and value-judgment determination[]” that triggers strict scrutiny. *Id.*

Atlanta’s 1982 Sign Code produces the same arbitrary results. Two billboards may stand side by side at the same location off the same freeway. A billboard reading “Vote for Smith” is permitted; a billboard reading “Visit Smith’s Restaurant” is not. A billboard that says “Merry Christmas” is permitted; a billboard saying “Merry Christmas—join us for services at Hillside Church on Christmas Eve at 9 p.m.” is not. A billboard reading “Run every day” is permitted; a billboard reading “Run the Peachtree Road Race” is not. In each case, the signs are structurally identical, all of the signs are “off-site,” and any potential government interests in regulation are identical. Only the message differs—and only certain types of messages are permitted. As in *Norton*, this is a content-based determination that *Reagan* does not authorize—but the Eleventh Circuit held the opposite.

The Third Circuit’s decision in *Camp Hill* similarly requires strict scrutiny under these circumstances. “To tell if a category is based on the sign’s content,” the Third Circuit “ask[s] how an ordinary reader would know what category a sign belongs in.” *Camp*

Hill, 101 F.4th at 269. “If he can do so by judging the sign’s content-neutral features, like its size or location, the category is content neutral. But if he must consider its subject matter, the category is content based.” *Id.* That test proceeds in three steps: identify the regulated category and a comparator; identify the feature distinguishing them; and ask whether that feature is “the sign’s topic, viewpoint, or subject matter.” *Id.*

Camp Hill applied that test to invalidate two distinct features of the ordinance’s “Temporary Sign” category at issue in that case. The first was a “Personal Expression Sign” category of such signs—defined as signs expressing “an opinion, interest, position, or other non-commercial message”—that was regulated more strictly than likewise temporary but commercial signs. *Id.*, at 268. Because “the defining feature [was] the sign’s noncommercial message,” the category was content based. *Id.*, at 269–70. But the second is particularly apt here. The ordinance defined “Temporary Signs” themselves as any “non-permanent Sign that is located on private property”—a definition that was, “[o]n its face ... content neutral.” *Id.*, at 270. But the ordinance carved out a separate category for “Holiday Decorations[.]” *Id.*

The Third Circuit held that the holiday carve-out made the entire catchall category content based. “A Temporary Sign is defined by what it is not—it does not celebrate a holiday. That is a subject-matter distinction, separating out Holiday Decorations as a content-based (and viewpoint-based) subset.” *Id.*, at 270–71. “When an ordinance singles out one content-based category for better treatment, the remaining catchall category becomes content based too.” *Id.*, at 270 (citing *Reed*, 576 U.S. at 159–60, 169).

Atlanta’s ordinance does precisely what *Camp Hill* forbade: it defines its regulated category—“general advertising signs”—partly by what it is not. A general advertising sign is one directing attention to a “business, profession, product, service, activity, accommodation, attraction or entertainment,” but *not* to a person, ideological message, or non-place-bound activity. Pet. App. 60a. That is “a subject-matter distinction,” and it pulls the entire regulated category onto the content-based side of the line. *Camp Hill*, 101 F.4th at 270. So even if Atlanta’s on-/off-premises rule, considered in isolation, could be defended as a “neutral, location-based line[],” the City’s choice to exempt favored subjects from the regulated category infects the category itself. *Reagan*, 596 U.S. at 69.

Norton and *Camp Hill* articulate a workable rule: a sign code is “agnostic as to content” only when its regulated category is defined by location alone, with no content-based exemptions or carve-outs. *Norton*, 99 F.4th at 850 (quoting *Reagan*, 596 U.S. at 69); *see also* *Camp Hill*, 101 F.4th at 269. The Eleventh Circuit adopted a different rule—that an ordinance is content neutral so long as it draws any line that can be described as “location-based,” even when the line is drawn around only some off-site subjects. Pet. App. 8a–9a. The resulting split of authority warrants this Court’s review.

E. The first question presented is important nationwide.

As this Court recognized in *Reagan*, “thousands of jurisdictions around the country ... regulate[] signs that advertise things that are not located on the same premises as the sign.” 596 U.S. at 64. But “even if *Reed* is not as broad as critics initially feared,” *Reagan* itself

“offers little clarity on when it actually applies,” and its “effort to distinguish *Reed* raises as many difficult doctrinal questions as it resolves.” *The Supreme Court, 2021 Term—Leading Cases*, 136 Harv. L. Rev. 320, 327 (2022). The first question presented here is foremost among them: what happens if a city builds content-based distinctions into an on-/off-premises regulation? Atlanta’s 1982 Sign Code is by no means unique; so, if the decision below stands, municipalities across the country will use the Eleventh Circuit’s reasoning to reintroduce all the content-based evils that *Reed* rightly denounced.

Many sign codes around the United States are directly analogous to Atlanta’s 1982 Sign Code. *See, e.g.*, Amarillo, Tex., Code of Ordinances § 4-2-2 (2009); Fargo, N.D., Code of Ordinances § 20-1311 (2021); Germantown, Wis., Code of Ordinances § 17.46(15) (2011); Kansas City, Mo., Zoning & Dev. Code § 88-810-1770 (2021); Tucson, Ariz., Unified Dev. Code § 11.3.4(F) (2021); Winter Garden, Fla., Code of Ordinances § 102-1 (2015). Even setting Atlanta aside, such codes govern some of the largest cities in America. *See, e.g.*, Los Angeles, Cal., Mun. Code § 14.4.2 (2008); San Diego, Cal., Mun. Code § 142.1210(a)(1) (2000). *See generally* Pet. App. 65a–73a.

The First Amendment doctrine governing such regulations affects every advertiser, business, religious organization, political candidate, and private citizen who would communicate through outdoor signage. As Justice Alito wrote in his *Reed* concurrence, “[c]ontent-based laws merit [the] protection” of strict scrutiny “because they present, albeit sometimes in a subtler form, the same dangers as laws that regulate speech based on viewpoint.” 576 U.S. at 174 (Alito, J., concurring). “Limiting speech based on its ‘topic’ or

‘subject’ favors those who do not want to disturb the status quo.” *Id.* And that governmental thumb on the scale in favor of the status quo is constitutionally suspect because it “may interfere with democratic self-government and the search for truth.” *Id.*

The decision below threatens great mischief for exactly these reasons. When, as here, government officials must look beyond the simple fact of whether a sign advertises something on premises or not, there is good reason to fear discriminatory enforcement. As in *Reed*, “one could easily imagine a Sign Code compliance manager who disliked [a] Church’s substantive teachings deploying the Sign Code to make it more difficult for [them] to inform the public of the location” of their events. *Reed*, 576 U.S. at 167–68; *Forsyth Cty. v. Nationalist Movement*, 505 U.S. 123, 130 (1992) (a “government regulation that allows arbitrary application ... has the potential for becoming a means of suppressing a particular point of view” (quotation omitted)). And the problem is never *greater* than when a sign contains controversial speech.

Here, the City of Atlanta’s 1982 Sign Code gives preferential treatment to personal, political, and ideological signs over not only *commercial* speech, but also other forms of noncommercial speech. It allows the government, in other words, to obtain the benefits associated with restricting off-premises signs, but to do so in ways that favor speech the government *prefers* over the speech it does not.

This Court should not allow *Reagan*’s blessing of on-/off-premises lines to subsume the very rule that it sought to clarify.

F. Granting review will preserve free-speech rights without unduly disrupting local governments' reliance on *Reagan*.

Resolving the first question presented here does not require the Court to circumscribe anything decided in *Reagan*; quite the opposite. Granting review and holding Atlanta's 1982 Sign Code to be content based properly harmonizes *Reed* and *Reagan* to work together in precisely the way this Court intended. As a result, granting review here would not undo any of the settling effect of *Reagan*—it will simply prevent *Reagan* from swallowing *Reed* altogether.

While many thousands of jurisdictions have implemented on-/off-premises regulations over the years, only a subset of these have defined the on-/off-premises line by reference to content.

Others have simply followed their state statute and appropriately drawn a pure on-/off-premises line in the manner of the Highway Beautification Act, 23 U.S.C. § 131. *See, e.g.*, Cary, N.C., Land Dev. Ordinance § 9.1.3 (2020); Clinton Twp., Mich., Code of Ordinances § 1488.02(e) (2020); College Station, Tex., Code of Ordinances app. A, art. VII, § 7.5(D)(11) (2023); Denver, Colo., Zoning Code § 10.10.3.2(K) (2018); Hesperia, Cal., Code of Ordinances § 16.36.020 (2017); Howell, Mich., Code of Ordinances § 7.02(a) (2019); Knoxville, Tenn., Code of Ordinances app. B, art. 13.2 (2021); Las Vegas, Nev., Unified Dev. Code § 19.12.120 (2021); Miami Beach, Fla., Code of Ordinances § 114-1 (2016); Pearland, Tex., Unified Dev. Code § 5(516) (2019); Plano, Tex., Code of Ordinances § 6-487(19) (2021); Rapid City, S.D., Code of Ordinances § 17.50.080 (2021); St. Joseph, Mich., Code of Ordinances § 25-2 (2020); Wauwatosa, Wis., Mun.

Code § 15.14.020 (2021); West Jordan, Utah, Code of Ordinances § 12-1-4 (2021); Wyckoff Twp., N.J., Code § 186-28(C)(1) (2020); Zumbrota, Minn., Zoning Ordinance § 20.3(B) (2020); *see* Pet. App. 73a–81a. Consistent with *Reagan*, such regulations are permissible.

Still others have baked content into the on-/off-premises distinction, but nonetheless avoid strict scrutiny by drawing the line (explicitly or implicitly) by reference to *commercial* speech. *See, e.g.*, Bentonville, Ark., Mun. Code app. A, art. 801, § 801.18 (2026); Bismarck, N.D., Code of Ordinances § 14-03.1-02.1 (2021); Burlington, Iowa, Code of Ordinances § 170.75.101(25) (2021); Cincinnati, Ohio, Mun. Code § 1427-03-O (2006); Grand Rapids, Mich., Code of Ordinances § 5.15.04(B)(3) (2020); Lake Mary, Fla., Code of Ordinances ch. 155, app. I, § 3 (2021); Madison, Wis., Code of Ordinances § 31.03 (2021); Monroe Cty., Fla., Land Dev. Code § 142-2 (2021); Murfreesboro, Tenn., Code of Ordinances § 25.2-25(D) (2026); Overland Park, Kan., Unified Dev. Ordinance § 18.440.020 (2021); Paynesville, Minn., Code of Ordinances § 36-10 (2020); Troy, Mich., Sign Ordinance § 85.01.03 (2018). Pet. App. 81a–87a. Such regulations are, of course, subject only to intermediate scrutiny. *Reagan*, 596 U.S. at 73 (citing *Metromedia, Inc. v. City of San Diego*, 453 U.S. 490, 507–12 (1981) (plurality opinion)).

The upshot is that granting review and reversing the decision below would not threaten substantial disruption in sign-code law, or call into question the Highway Beautification Act or its state progeny. Instead, review here will serve to ensure that courts do not misread *Reagan* to subsume the rule in *Reed*.

II. The Eleventh Circuit departed from the party-presentation principle; at minimum, the Court should grant, vacate, and remand.

In *United States v. Sineneng-Smith*, this Court explained that courts should “normally decide only questions presented by the parties,” and “do not, or should not, sally forth each day looking for wrongs to right[.]” 590 U.S. at 376 (quotation omitted). “[O]ur system is designed around the premise that parties represented by competent counsel know what is best for them, and are responsible for advancing the facts and argument entitling them to relief.” *Id.*, at 375 (citation modified and quotation omitted). Federal courts should therefore “rely on the parties to frame the issues for decision,” and confine themselves to “the role of neutral arbiter o[n those] matters the parties present.” *Id.* (quoting *Greenlaw v. United States*, 554 U.S. 237, 243 (2008)). Exceptions are rare, and center on preventing obvious injustices, as is sometimes necessary in the case of *pro se* litigants. *Id.* (citing *Castro v. United States*, 540 U.S. 375, 381–83 (2003)).

In *Sineneng-Smith*, the defendant “urged unsuccessfully ... that [certain] provisions [of 8 U.S.C. § 1324, under which she was prosecuted], ... did not cover her conduct, and if they did, they violated the Petition and Free Speech Clauses of the First Amendment as applied.” *Id.*, at 374. “Throughout the District Court proceedings and on appeal, she was represented by competent counsel.” *Id.* And on appeal, “Sineneng-Smith essentially repeated the arguments she earlier presented to the District Court.” *Id.* But “[t]he case was ... moved by the appeals panel onto a different track. Instead of adjudicating the case [as] presented by the parties, the appeals court named three *amici*

and invited them to brief and argue issues framed by the panel, including a question *Sineneng-Smith* herself never raised earlier[.]” *Id.* Namely: “[w]hether the statute of conviction [wa]s overbroad ... under the First Amendment.” *Id.* (internal quotation marks omitted). Then, “[i]n the ensuing do over of the appeal, counsel for the parties were assigned a secondary role.” *Id.*, at 374–75. “The Ninth Circuit ultimately concluded, in accord with the invited *amici*’s arguments, that § 1324(a)(1)(A)(iv) is unconstitutionally overbroad.” *Id.*, at 375.

This case is on all fours with *Sineneng-Smith*. Here, the City conceded, throughout the proceedings, that the pertinent provisions of the 1982 Sign Code were content based and subject to strict scrutiny. Far from being pro se and in need of protection, the City is a sophisticated repeat player in litigation, and made its strategy choices with and through competent counsel. And the City’s choice was to argue only that Petitioners’ claims were moot—even on appeal, after the district court had enjoined enforcement of the 1982 Sign Code.

Indeed, in the district court, the City never challenged the assertion that the 1982 Sign Code was content-based. *See* D. Ct. Doc. 38 at 8–12. Instead, the City argued that Petitioners’ claim was moot because the 1982 Sign Code had been displaced by the 2015 Ordinance—even if the lawfulness of the Subject Signs under the 2015 Ordinance turned, in part, on

whether the signs were previously lawful under the 1982 Sign Code. *Id.*⁴

The same was true at the panel briefing stage in the Eleventh Circuit. *See generally* C.A. Docs. 17, 24.

Instead, the Eleventh Circuit raised the content-neutrality issue *sua sponte*, in a notice issued shortly before oral argument. *See* Pet. App. 52a (“Please prepare to discuss whether, under ... *Reagan* ... subsection (7) makes a content-neutral distinction between on- and off-premises signs, and whether the 1982 Sign Code, as applied to Multimedia, is therefore constitutional.”); *see also id.*, at 54a (instructing the parties to file supplemental briefs addressing the same question).

Of course, the City finally adopted the panel’s theory in its post-argument supplemental briefing. *See* C.A. Doc. 43. But that was true in *Sineneng-Smith* too, and it did not change this Court’s decision. *See* 590 U.S. at 379 (“in the redone appeal, Sineneng-Smith’s counsel adopted” the new arguments—“How could she do otherwise? Understandably, she rode with an argument suggested by the panel.”). So, in both cases, the arguments of counsel “fell by the wayside” precisely because “they did not mesh with the panel’s ... theory of the case.” *Id.*

Quite simply: the Eleventh Circuit overturned the district court’s injunction against enforcement of the 1982 Sign Code based on a legal theory that the City never advanced and that only the court itself raised

⁴ The City also endorsed the district court’s mistaken interpretation of the Rooker-Feldman doctrine after the district court *sua sponte* raised that issue. *See generally* D. Ct. Docs. 43, 55.

just before oral argument. That was an abuse of discretion, just like it was in *Sineneng-Smith*.

If the City had tried to raise arguments about content neutrality for the first time on appeal, there would have been no question that the issue was forfeited. *See, e.g., Sapuppo v. Allstate Floridian Ins. Co.*, 739 F.3d 678, 680 (11th Cir. 2014) (“When an appellant fails to challenge properly on appeal one of the grounds on which the district court based its judgment, he is deemed to have abandoned any challenge of that ground,” and issues raised for the first time in a reply brief “come too late”). Yet the Eleventh Circuit took it upon itself to inject that issue into the case on its own initiative, without even—as the Ninth Circuit did in *Sineneng-Smith*—appointing amici to represent the forfeited position.

As in *Sineneng-Smith*, “[n]o extraordinary circumstances justified the panel’s takeover of the appeal” here. 590 U.S. at 380. The panel relied on circuit precedent stating that it could “‘exercise ... discretion to consider a forfeited issue’ when ‘the proper resolution is beyond any doubt.’” Pet. App. 7a (quoting *United States v. Campbell*, 26 F.4th 860, 873 (11th Cir. 2022)). Even if that exception to the party-presentation principle comports with *Sineneng-Smith*—which is not clear—the first question presented here is *far* from beyond doubt. That makes it all the more inappropriate for the Eleventh Circuit to have reached out and decided the issue on its own initiative.

To be sure, the Eleventh Circuit started down this path by raising a question regarding Petitioners’ standing—which cannot be waived. Pet. App. 6a; *see Mitchell v. Maurer*, 293 U.S. 237, 244 (1934) (“An appellate federal court must satisfy itself not only of its own jurisdiction, but also of that of the lower courts in

a cause under review.”). But that principle only goes so far as to justify the Eleventh Circuit holding that “Multimedia has standing only to challenge section 16-28.019(7) [of the 1982 Sign Code],” and “lacks standing to bring a facial challenge against any provision other than subsection (7).” Pet. App. 6a–7a.

Whether “[t]he district court *also* erred in accepting the parties’ stipulation that the provisions of the 1982 sign code applied to Multimedia were content-based,” *id.*, at 7a, is a separate question. And that question turns on the proper application of *Reagan*—not any principle of standing. *See id.* And again: the Eleventh Circuit acknowledged as much, citing not its own obligation to assure itself of jurisdiction, but rather its “discretion to consider a forfeited issue’ when ‘the proper resolution is beyond any doubt’” to justify raising and deciding the *Reagan* issue for itself. *Id.* (quoting *Campbell*, 26 F.4th at 873). Certainly, the Eleventh Circuit’s assertion that Atlanta’s 1982 Sign Code is content neutral “[e]ven assuming that subsection (7) does not apply to signs advertising” things like “persons,” has nothing to do with standing, *id.*, at 8a, and so it cannot be justified by reference to the court’s obligation to assure itself of jurisdiction. This was *sua sponte* reframing of the merits—plain and simple.

* * *

In sum, the Eleventh Circuit here “departed so drastically from the principle of party presentation as to constitute an abuse of discretion.” *Sineneng-Smith*, 590 U.S. at 375. As in *Sineneng-Smith*, this Court can, and should, vacate and remand for reconsideration “shorn of the ... inquiry interjected by the appellate panel and bearing a fair resemblance to the case shaped by the parties.” *Id.*, at 380.

CONCLUSION

For these reasons, this Court should grant the petition. In the alternative, the Court should grant the petition, vacate the judgment below, and remand for further proceedings in light of *United States v. Sineneng-Smith*, 590 U.S. 371 (2020).

Respectfully submitted this 8th day of October, 2026.

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APPENDIX

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**APPENDIX A — OPINION OF THE UNITED STATES
COURT OF APPEALS FOR THE ELEVENTH
CIRCUIT, FILED APRIL 15, 2026**

IN THE
UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 24-13509

MULTIMEDIA TECHNOLOGIES, INC.,

Plaintiff,

GEOFFREY ANDERSON, PEACH HOSPITALITY
OF GEORGIA, LLC.,

Plaintiffs-Appellees,

versus

CITY OF ATLANTA, GEORGIA,

Defendant-Appellant.

Appeal from the United States District Court
for the Northern District of Georgia
D.C. Docket No. 1:21-cv-01280-VMC

Before WILLIAM PRYOR, Chief Judge, and ABUDU and
TJOFLAT, Circuit Judges.

WILLIAM PRYOR, Chief Judge:

This appeal requires the straightforward application
of the First Amendment to a municipal sign ordinance.
In 2015, after the Supreme Court decided *Reed v. Town*

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of Gilbert, 576 U.S. 155, 171, 135 S. Ct. 2218, 192 L. Ed. 2d 236 (2015), the City of Atlanta amended its sign code to remove several content-based provisions. The new code allowed nonconforming signs to remain if they were legal under the earlier code. A state court ruled that a sign operator’s pre-2015 signs were not lawfully nonconforming because they violated the earlier code. When Atlanta attempted to remove the signs, the sign operator, Multimedia Technologies, sought an injunction in the district court on the ground that the earlier code is unconstitutional. The district court granted summary judgment in favor of Multimedia and enjoined enforcement of the code. Because the relevant provision of the sign code is content-neutral, we vacate and remand for further proceedings.

I. BACKGROUND

The City of Atlanta adopted a sign code in 1982. Section 16-28.019 of the 1982 sign code required that signs be permitted before they could be erected. But section 16-28.019(1) exempted “campaign signs,” “[m]emorial signs,” and “[b]ulletin boards” from the permitting requirement. The definitions of the exempted signs were content-based. A separate provision, section 16-28.019(7), limited construction of “signs near freeways [and] expressways.” Those limitations applied only to “general advertising sign[s],” which the code defined as “sign[s] which [are] for the purpose of directing attention to a business, profession, product, service, activity, accommodation, attraction or entertainment not principally conducted, sold or offered on the premises.” The code also clarified that these signs “may also be referred to as off-site signs.”

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Multimedia Technologies owns and operates two signs at a property owned by Peach Hospitality of Georgia. The signs are adjacent to and visible from Interstate 85, just north of downtown Atlanta. These signs were permitted by Atlanta in May 1993 under section 16-28.019. The signs were installed in compliance with the permits, and those permits were repeatedly renewed between 2002 and 2008.

In 2015, Atlanta adopted a new sign code. Earlier that year, the Supreme Court held that a municipal sign code which “imposes content-based restrictions on speech” was subject to strict scrutiny under the First Amendment. *Reed*, 576 U.S. at 171. In response, Atlanta amended its sign code by removing section 16-28.019. But the 2015 code allowed a nonconforming sign to remain in use. And it defined a nonconforming sign as one “lawfully erected prior to the adoption” of the 2015 sign code that “does not conform to the requirements of” the new code.

In 2018, Multimedia sought a permit “to upgrade the sign changing technology” for its signs. Atlanta issued the requested conversion permits. Three private parties appealed the decision to the Board of Zoning Adjustment, which rejected the challenge. Two of the private parties then appealed the Board’s decision to the Superior Court of Fulton County.

The superior court overturned the Board’s decision. It stated that “[a]ll parties agree[d] that the signs are, at present, nonconforming.” And it interpreted the nonconforming provision of the 2015 code to require that “for *any* new permits to issue for these signs, it must be shown that they were, at some point, lawful.” To answer

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that question, the superior court looked to section 16-28.019(7) of the 1982 sign code governing “off-site signs.” Applying subsection (7), it found four fatal errors in the 1993 permits, rendering the original permits “unlawful at inception.” So, it reversed the Board’s decision.

Atlanta then ordered Multimedia to remove the signs altogether. It first sent a Zoning Correction Notice to Multimedia that required it to “remov[e] the unlawful signs . . . within 30 days.” When Multimedia failed to do so, Atlanta twice issued arrest citations to Geoffrey Anderson, the president of Multimedia, and Harrison Coleman, Peach’s registered agent. Atlanta agreed to stay both citations pending the outcome of this litigation.

Anderson, Multimedia Technologies, and Peach sued Atlanta in the district court. They asked for a declaratory judgment that the 1982 sign code is unconstitutional, facially and as applied, under the First Amendment, and a permanent injunction to prevent Atlanta from enforcing the 1982 sign code against them. In response, Atlanta denied that it was enforcing the 1982 sign code.

Multimedia, Anderson, and Peach moved for summary judgment. The district court *sua sponte* ordered the parties to brief “whether the Superior Court Order precludes” federal-court review under the *Rooker-Feldman* doctrine. After the parties submitted their briefs, the district court granted summary judgment against Multimedia and dismissed its claims for lack of subject-matter jurisdiction but left the claims of the other two plaintiffs intact. It stayed the case as to the remaining

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plaintiffs until we issued our mandate in Multimedia’s appeal. We dismissed the appeal for lack of appellate jurisdiction.

Multimedia then asked the district court to reconsider the summary judgment against it. The district court did so and concluded that its jurisdictional ruling “was wrong when issued.” Turning to the merits, it agreed that the 1982 sign code was “content-based,” and that Atlanta “has the burden of defending the code under strict scrutiny.” But Atlanta had made no effort to do so. It argued instead that the challenge was moot because the 1982 sign code had been fully replaced by the 2015 code. The district court rejected this argument because the 2015 code “incorporates prior law by reference for the purpose of determining whether a sign is a nonconforming sign.” The district court ruled that Multimedia, Anderson, and Peach could challenge the 1982 sign code, “sustain[ed] [their] facial challenge,” issued summary judgment for Multimedia, Anderson, and Peach, and enjoined Atlanta from enforcing the 1982 sign code against them.

We directed the parties to address at oral argument whether subsection (7) of the 1982 sign code “makes a content-neutral distinction between on- and off-premises signs, and whether the 1982 Sign Code, as applied to Multimedia, is therefore constitutional.” After argument, we ordered the parties to file supplemental briefs addressing “whether section 16-28.019(7)” is “content-neutral.” Atlanta argues that it is; Multimedia, Anderson, and Peach argue that it is not.

*Appendix A***II. STANDARD OF REVIEW**

We review a summary judgment *de novo*. *Lowery v. AmGuard Ins. Co.*, 90 F.4th 1098, 1103 (11th Cir. 2024).

III. DISCUSSION

Multimedia, Anderson, and Peach (collectively Multimedia) maintain both facial and as-applied challenges to the 1982 sign code. The district court erred as to both theories. It was wrong to sustain a facial challenge against the entire 1982 sign code when Multimedia has standing only to challenge section 16-28.019(7). And it was wrong to conclude that the 1982 sign code, as applied to Multimedia, was content-based.

The Constitution requires that a party seeking relief in federal court “suffer[] some threatened or actual injury resulting from the putatively illegal action.” *Warth v. Seldin*, 422 U.S. 490, 499, 95 S. Ct. 2197, 45 L. Ed. 2d 343 (1975) (citation and internal quotation marks omitted). A plaintiff challenging a purportedly unconstitutional law must prove that it suffered injury under each provision it seeks to invalidate. *CAMP Legal Def. Fund v. City of Atlanta*, 451 F.3d 1257, 1269 (11th Cir. 2006). An “injury under one provision” does not “confer standing on a plaintiff to challenge all provisions of an allegedly unconstitutional ordinance.” *Id.* at 1273. Although a plaintiff may “mount a facial challenge to provisions” of an ordinance that cause it injury, it must prove “by affidavit or other evidence . . . that every challenged provision affects [it.]” *Id.* at 1273-74 (citation and internal quotation marks

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omitted). And “a federal court is obligated to inquire into subject matter jurisdiction *sua sponte* whenever it may be lacking.” *Univ. of S. Ala. v. Am. Tobacco Co.*, 168 F.3d 405, 410 (11th Cir. 1999).

Multimedia can establish standing only as to one provision: subsection (7). The superior court relied only on that subsection in ruling that Multimedia’s signs were not lawfully nonconforming. Multimedia provided no evidence that it suffered injury from other provisions of the 1982 sign code. So it lacks standing to bring a facial challenge against any provision other than subsection (7).

The district court also erred in accepting the parties’ stipulation that the provisions of the 1982 sign code applied to Multimedia were content-based. Subsection (7) restricts only the use of “off-site signs,” or signs advertising a business “not principally conducted . . . on the premises” on which the sign is located. Regulations distinguishing between “on-premises and off-premises signs” are “content neutral” under the First Amendment. *City of Austin v. Reagan Nat’l Advert. of Aus., LLC*, 596 U.S. 61, 142 S. Ct. 1464, 1473, 212 L. Ed. 2d 418 (2022). “[W]e may exercise our discretion to consider a forfeited issue” when “the proper resolution is beyond any doubt.” *United States v. Campbell*, 26 F.4th 860, 873 (11th Cir. 2022) (en banc). Because it falls squarely under *City of Austin*, subsection (7) of the 1982 sign code was content-neutral on its face and as applied to Multimedia.

Multimedia makes three arguments against this conclusion. None persuade us. We address each in turn.

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First, Multimedia argues that we cannot neatly separate subsection (7) from the rest of the sign code because Atlanta’s arrest citations did not do so. But the arrest citations referred generally to the “1982 Atlanta Zoning Ordinance,” not even to section 16-28.019. And the citations clarified that the violation was the failure to “remove two unlawful non-conforming signs . . . that were ruled to be illegal” by the “Superior Court” of Fulton County. Unless Multimedia violated every provision of the 1982 Zoning Ordinance, the arrest citations alleged only a violation of subsection (7).

Second, Multimedia argues that we cannot separate subsection (7) from the content-based provisions of subsections (1)-(6). Because the superior court decided that its *permits* were unlawfully issued, Multimedia argues that we must look at the general permitting requirement and its content-based exceptions. But subsection (7) applies to all general advertising signs regardless of their permit status.

Finally, Multimedia argues that subsection (7) itself “is a content-based restriction” distinguishable from the sign code at issue in *City of Austin*. It argues that although the sign code in *City of Austin* defined an off-premises sign to include one advertising a “person,” the 1982 sign code does not. It maintains that for a court to determine “[w]hether a sign relates to a person running for office, to a charitable activity, or to a business,” it must look to the content of the sign. This argument fails.

Even assuming that subsection (7) does not apply to signs advertising “persons,” it is content-neutral because

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it “do[es] not single out any topic or subject matter for differential treatment.” *City of Austin*, 142 S. Ct. at 1472. True, enforcing the sign code “requires reading a billboard to determine whether it directs readers to the property on which it stands or to some other, offsite location,” but a rule that “holds that a regulation cannot be content neutral if it requires reading the sign at issue . . . is too extreme an interpretation of [the Supreme] Court’s precedent.” *Id.* at 1471-72. Instead, because the “substantive message itself is irrelevant to the application” of the sign code, it is content-neutral. *Id.* at 1472. Enforcement of subsection (7) requires only that Atlanta determine that a sign is a general advertising sign, which turns on the sign’s “location,” not its content. *Id.*

The district court concluded that the 1982 sign code was content-based, so it did not apply the proper level of scrutiny to subsection (7). For a content-neutral provision to survive, on its face and as applied to Multimedia, it must be “narrowly tailored to serve a significant governmental interest.” *Id.*, 142 S. Ct. at 1475 (citation and internal quotation marks omitted). Because “we are a court of review, not a court of first view,” *Donald v. Norris*, 131 F.4th 1255, 1269 (11th Cir. 2025) (citation and internal quotation marks omitted), and the parties have not briefed application of the correct level of scrutiny to section 16-28.019(7), we remand to the district court to consider the constitutionality of subsection (7) in the first instance. *See, City of Austin*, 142 S. Ct. at 1476; *In re Ga. Senate Bill 202*, 160 F.4th 1171, 1177 (11th Cir. 2025).

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IV. CONCLUSION

We **VACATE** the summary judgment and injunction and **REMAND** for further proceedings consistent with this opinion.

**APPENDIX B — ORDER OF THE UNITED STATES
DISTRICT COURT FOR THE NORTHERN DISTRICT
OF GEORGIA, ATLANTA DIVISION,
FILED SEPTEMBER 24, 2024**

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

Civil Action No. 1:21-cv-01280-VMC

MULTIMEDIA TECHNOLOGIES, INC.,
GEOFFREY ANDERSON, AND PEACH
HOSPITALITY OF GEORGIA, LLC,

Plaintiffs,

v.

CITY OF ATLANTA, GEORGIA,

Defendant.

ORDER

Before the Court is the Motion of Plaintiffs Multimedia Technologies, Inc. (“Multimedia”), Geoffrey Anderson (“Anderson”), and Peach Hospitality of Georgia, LLC (“Peach”) (collectively, “Plaintiffs”) for Reconsideration (Doc. 59).

The Court previously certified a final judgment in this matter against Multimedia as to its claims against Defendant City of Atlanta (the “City”) on the ground

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that Multimedia's claims against the City were barred by the *Rooker-Feldman* doctrine, but the Court of Appeals vacated the Court's certification and dismissed Multimedia's appeal. (Doc. 57). Multimedia now seeks reconsideration of that Order's ruling as to the *Rooker-Feldman* doctrine. Also before the Court are the motions of Peach and Anderson for summary judgment against the City, which were stayed by the Court's prior Order.

The Court has already provided the background for this case at length in prior Orders and will not restate it here. (*See* Doc. 48). The City did not file a response to the Motion for Reconsideration, which indicates no opposition to the Motion for Reconsideration. LR 7.1(B), NDGa.

Legal Standard

Under Local Rule 7.2, NDGa., a motion for reconsideration shall not be filed as a matter of routine practice. *See Belmont Holdings Corp. v. SunTrust Banks, Inc.*, 896 F. Supp. 2d 1210, 1223 (N.D. Ga. 2012) (citing LR 7.2(E), NDGa.). If a party finds it "absolutely necessary" to file, the motion must be filed within 28 days after entry of the order or judgment. LR 7.2(E), NDGa. Such absolute necessity arises only when there is "(1) newly discovered evidence; (2) an intervening development or change in controlling law; or (3) a need to correct a clear error of law or fact." *Bryan v. Murphy*, 246 F. Supp. 2d 1256, 1258-59 (N.D. Ga. 2003) (citation omitted).

A motion for reconsideration may not be used "to present the court with arguments already heard and

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dismissed or to repackage familiar arguments to test whether the court will change its mind.” *Id.* at 1259. Nor may it be used “to offer new legal theories or evidence that could have been presented in conjunction with the previously filed motion or response, unless a reason is given for failing to raise the issue at an earlier stage in the litigation.” *Adler v. Wallace Comput. Servs., Inc.*, 202 F.R.D. 666, 675 (N.D. Ga. 2001). “This prohibition includes new arguments that were ‘previously available, but not pressed.’” *Wilchombe v. TeeVee Toons, Inc.*, 555 F.3d 949, 957 (11th Cir. 2009) (quoting *Stone v. Wall*, 135 F.3d 1438, 1442 (11th Cir. 1998)). Finally, “[a] motion for reconsideration is not an opportunity for the moving party . . . to instruct the court on how the court ‘could have done it better’ the first time.” *Pres. Endangered Areas of Cobb’s Hist., Inc. v. U.S. Army Corps of Eng’rs*, 916 F. Supp. 1557, 1560 (N.D. Ga. 1995), *aff’d*, 87 F.3d 1242 (11th Cir. 1996). “If a party presents a motion for reconsideration under any of these circumstances, the motion must be denied.” *Bryan*, 246 F. Supp. 2d at 1259; *see also Brogdon ex rel. Cline v. Nat’l Healthcare Corp.*, 103 F. Supp. 2d 1322, 1338 (N.D. Ga. 2000).

In most circumstances, “clear error” means that “the record lacks substantial evidence” to support a particular finding. *Robinson v. Sauls et al.*, No. 1:18-cv-131-TCB, 2021 U.S. Dist. LEXIS 103920, 2021 WL 2103583, at *1 (N.D. Ga. Mar. 4, 2021) (citing *San Martin v. McNeil*, 633 F.3d 1257, 1265 (11th Cir. 2011) and *Campero USA Corp. v. ADS Foodservice, LLC*, 916 F. Supp. 2d 1284, 1292-93 (S.D. Fla. 2012) (“[C]lear error or manifest injustice occurs where the Court has patently misunderstood a

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party, or has made a decision outside the adversarial issues presented to the Court by the parties, or has made an error not of reasoning but of apprehension.... Such problems rarely arise and the motion to reconsider should be equally rare.”)).

Discussion

The Court first revisits its *Rooper-Feldman* ruling, and then addresses the remainder of Plaintiffs’ First Amendment arguments in their Motion for Summary Judgment.

I. *Rooper—Feldman*

Multimedia and the City were previously parties to a civil action challenging a decision of the Board of Zoning Adjustment of the City of Atlanta (“BZA”) to issue a Conversion Permit for two Subject Signs¹ in the Superior Court of Fulton County (“Superior Court”), No. 2019CV323401 (the “Superior Court Appeal”).

On December 12, 2019, the Superior Court reversed the decision by the BZA and held that the Conversion Permits were “wrongly issued.” (“Superior Court Order”). In reaching this conclusion, the Superior Court reasoned that the original 1993 permits were wrongly issued pursuant to the 1982 Sign Code. In this case, Plaintiffs seek a ruling that the 1982 Sign Code is unconstitutional facially and as applied to the Subject Signs under the

1. Undefined capitalized terms have the meanings given in the Court’s prior Order. (Doc. 48).

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Supreme Court's decision in *Reed v. Town of Gilbert*, 576 U.S. 155, 135 S. Ct. 2218, 192 L. Ed. 2d 236 (2015).

The Court previously held that it lacked jurisdiction to grant Plaintiffs' requested relief because it would improperly require vacating the Superior Court Order under the *Rooker—Feldman* doctrine. "The *Rooker-Feldman* doctrine eliminates federal court jurisdiction over those cases that are essentially an appeal by a state court loser seeking to relitigate a claim that has already been decided in a state court." *Target Media Partners v. Specialty Mktg. Corp.*, 881 F.3d 1279, 1281 (11th Cir. 2018).² As the Court explained, under the *Rooker-Feldman* doctrine, a federal court is barred from adjudicating a claim that was "either (1) one actually adjudicated by a state court or (2) one inextricably intertwined with a state court judgment," and a claim is inextricably intertwined "if it asks to effectively nullify the state court judgment, or it succeeds only to the extent that the state court wrongly decided the issues." *Id.* at 1286. The Court held that Plaintiffs' claims sought to overturn the Superior Court Order to the extent that it was a judgment that the 1993 permits were wrongly issued, and determined that, as to Multimedia, such claims were barred by *Rooker-Feldman*.

Plaintiffs now contend that intervening developments in the law justify departing from the Court's ruling,

2. The doctrine takes its name from two Supreme Court cases, *Rooker v. Fidelity Trust Co.*, 263 U.S. 413, 44 S. Ct. 149, 68 L. Ed. 2d 362, 68 L. Ed. 362 (1923), and *D.C. Court of Appeals v. Feldman*, 460 U.S. 462, 103 S. Ct. 1303, 75 L. Ed. 2d 206 (1983).

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pointing to decisions in *Reed v. Goertz*, 598 U.S. 230, 235, 143 S. Ct. 955, 215 L. Ed. 2d 218 (2023) and *Alabama Creditors v. Dorand (In re Dorand)*, 95 F.4th 1355, 1362 (11th Cir. 2024). The Court appreciates Plaintiffs’ attempts to soften their motion by pointing to intervening developments since the Court entered its Order but ultimately recognizes that the Court’s prior decision was wrong when issued.³ Plaintiffs are correct that even if the State Court Order is unreviewable, their challenge to the 1982 Sign Code, as incorporated by reference into the modern sign code, remains viable. *Goertz*, 598 U.S. at 235. The Court turns to that challenge.

II. First Amendment Claim

As noted above, the Subject Signs were originally permitted according to the City’s 1982 Sign Code. Plaintiffs contend that the “1982 Sign Code . . . purports to govern all signs within the City, but then exempts numerous categories of signs, including temporary campaign signs, bulletin board signs (signs that primarily display “the name of public, charitable, educational or religious organization[s] and/or institution[s] and the events of such”), temporary real estate signs, and grand

3. The Eleventh Circuit’s cur dicta in *Behr v. Campbell*, 8 F.4th 1206, 1212 (11th Cir. 2021), that “district courts should keep one thing in mind when *Rooker-Feldman* is raised: it will almost never apply” has effectively replaced the *Rooker-Feldman* legal standard through successive adoption by panels. See *Dorand*, 95 F.4th at 1362. It is difficult for the Court to conceive of an instance where the doctrine, so circumscribed, would cover any case not already covered by preclusion doctrines.

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opening signs.” (Doc. 36-1 at 17). Plaintiffs therefore contend that the 1982 Sign Code is a content-based regulation of speech.

The Supreme Court held in *Reed* that “[a] regulation of speech is facially content based under the First Amendment if it “target[s] speech based on its communicative content”—that is, if it “applies to particular speech because of the topic discussed or the idea or message expressed.” *City of Austin v. Reagan Nat’l Adver. of Austin, LLC*, 596 U.S. 61, 69, 142 S. Ct. 1464, 212 L. Ed. 2d 418 (2022) (quoting *Reed*, 576 U.S. at 163). The Court found the sign code at issue in that case to be content based, noting:

It defines “Temporary Directional Signs” on the basis of whether a sign conveys the message of directing the public to church or some other “qualifying event.” . . . It defines “Political Signs” on the basis of whether a sign’s message is “designed to influence the outcome of an election.” . . . And it defines “Ideological Signs” on the basis of whether a sign “communicat[es] a message or ideas” that do not fit within the Code’s other categories. . . . It then subjects each of these categories to different restrictions.

Reed, 576 U.S. at 164. “Because the Town’s Sign Code impose[d] content-based restrictions on speech,” the Court explained, “those provisions can stand only if they survive strict scrutiny, ‘which requires the Government to prove that the restriction furthers a compelling interest

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and is narrowly tailored to achieve that interest.” *Id.* at 171 (quoting *Ariz. Free Enter. Club’s Freedom Club PAC v. Bennett*, 564 U.S. 721, 734, 131 S. Ct. 2806, 180 L. Ed. 2d 664 (2011)).

The Court agrees with Plaintiffs that the 1982 Sign Code is a content-based regulation of speech, and therefore the City has the burden of defending the code under strict scrutiny. However, in its response to Plaintiffs’ summary judgment motion, the City did not attempt to meet this burden. Instead, the City argued that Plaintiffs’ challenge is moot because “[i]n 2015, the City replaced the 1982 Sign Code for the 2015 Sign Code, which eliminated all the provisions challenged by Plaintiffs.” (Doc. 38). But, as the Court noted in its prior Order, the 2015 Ordinance incorporates prior law by reference for the purpose of determining whether a sign is a nonconforming sign:

Under Section 16-28A.004 of the 2015 Ordinance, a “Nonconforming Sign” is defined as “[a] sign that was lawfully erected prior to the adoption of this chapter and does not conform to the requirements of this chapter or other provisions of part 16.”

(Doc. 48 at 6). If the 1982 Sign Code was unconstitutional at the time the 1993 permit was (apparently wrongfully) issued, then the Subject Signs are nonconforming signs under the 2015 Ordinance, because in the absence of a valid zoning ordinance, “an owner[] [has the] right to freely use his property for any lawful purpose.” *Fayette Cnty. v. Seagraves*, 245 Ga. 196, 264 S.E.2d 13, 15 (Ga. 1980) (quoting *Foster v. Vickery*, 202 Ga. 55, 42 S.E.2d

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117 (Ga. 1947)). Accordingly, there is a live controversy as to Plaintiffs' rights under the 2015 Ordinance. Because the City failed to meet its burden under strict scrutiny, the Court will sustain Plaintiffs' facial challenge. And as Plaintiffs note, this ruling "will end this case because it will make Plaintiffs' remaining claim for injunctive relief under the Fifth Amendment moot." (Doc. 36-1 at 21).

Conclusion

For the reasons given above, it is

ORDERED that Plaintiffs' Motion for Reconsideration (Doc. 59) is **GRANTED**. The Court **SETS ASIDE** its prior Order (Doc. 48) denying Plaintiffs' Motion for Summary Judgment (Doc. 36). Instead, it is

ORDERED that Plaintiffs' Motion for Summary Judgment (Doc. 36) is **GRANTED**. The Clerk is **DIRECTED** to enter judgment in favor of Plaintiffs and against the City which provides that:

(1) the 1982 Sign Code, specifically, Section 16-28.019 of the 1982 Sign Code is **DECLARED** an unconstitutional infringement of the right of free speech protected by the First and Fourteenth Amendments to the United States Constitution and

(2) the City is **PERMANENTLY ENJOINED** "from enforcing" the 1982 Sign Code or taking any action against Plaintiffs based on alleged violations of the 1982 Sign Code.

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The Clerk is directed to close the case.

SO ORDERED this 24th day of September, 2024.

/s/ Victoria Marie Calvert

Victoria Marie Calvert

United States District Judge

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**APPENDIX C — JUDGMENT OF THE
UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF GEORGIA, ATLANTA
DIVISION, FILED SEPTEMBER 24, 2024**

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

Civil Action No. 1:21-cv-01280-VMC

MULTIMEDIA TECHNOLOGIES, INC.,
GEOFFREY ANDERSON, AND PEACH
HOSPITALITY OF GEORGIA, LLC,

Plaintiffs,

v.

CITY OF ATLANTA, GEORGIA,

Defendant.

JUDGMENT

This matter having come before the Court on Plaintiffs' Motion for Summary Judgment, and the Court having granted said motion, it is

ORDERED, ADJUDGED, AND DECREED that judgment is entered in favor of Plaintiffs on their claims for declaratory and injunctive relief, and the Court **DECLARES** that Section 16-28.019 of the 1982 City of Atlanta Sign Code is an unconstitutional infringement

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of the right of free speech protected by the First and Fourteenth Amendments to the United States Constitution.

It is **FURTHER ORDERED, ADJUDGED, AND DECREED** that the City is **PERMANANTLY ENJOINED** from enforcing the 1982 Sign Code or taking any action against Plaintiffs based on alleged violations of the 1982 Sign Code.

SO ORDERED this 24th day of September, 2024.

/s/ Victoria Marie Calvert
Victoria Marie Calvert
United States District Judge

**APPENDIX D — OPINION AND ORDER OF THE
UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF GEORGIA, ATLANTA
DIVISION, FILED SEPTEMBER 23, 2022**

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

Civil Action No. 1:21-cv-01280-VMC

MULTIMEDIA TECHNOLOGIES, INC.,
GEOFFREY ANDERSON, AND PEACH
HOSPITALITY OF GEORGIA, LLC,

Plaintiffs,

v.

CITY OF ATLANTA, GEORGIA,

Defendant.

OPINION AND ORDER

Before the Court is the Motion of Plaintiffs Multimedia Technologies, Inc. (“Multimedia”), Geoffrey Anderson (“Anderson”), and Peach Hospitality of Georgia, LLC (“Peach”) (collectively, “Plaintiffs”) for Summary Judgment (“Motion,” Doc. 36).

On July 29, 2022, the Court enter an Order and Notice of Intent to Enter Judgment Independent of the Motion under Federal Rule of Civil Procedure 56(f) in favor of

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nonmovant City of Atlanta (the “City”) on jurisdictional grounds. The Parties filed supplemental briefs and the Motion is now ripe for resolution.

Background¹

Multimedia owns a Wall Sign and a Rooftop Sign (collectively, the “Subject Signs”) that are located at the property owned by Peach at 1655 Peachtree Street, N.E., Atlanta, Georgia (the “Property”). A picture of the Subject Signs follows:



In 1993, the Property was regulated by the 1982 Atlanta Zoning Ordinance. (Pls.’ Statement of Undisputed Material Facts (“SUMF”) ¶ 1, Doc. 36-4). Chapter 28 of

1. The following is largely restated from the Court’s prior Order.

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the Atlanta Zoning Ordinance contains the 1982 Sign Code, as it existed in 1993. (*Id.* ¶ 2). Section 16-28.019 of the 1982 Sign Code generally requires signs to be permitted before they can be erected, located, or maintained. (*Id.* ¶ 3). Section 16-28.019(1) of the 1982 Sign Code, however, contains numerous exemptions from this sign permit requirement. (*Id.* ¶ 4). Specifically, Section 16-28.019(1) exempts the following eight “signs or activities related to signs” from the sign permit requirement:

- (a) *Address or identification signs*: One (1) sign, not exceeding two (2) square feet in surface area, indicating the address and/or the name of the occupant and/or premises, or the accessory use of a dwelling for a home occupation or for professional purposes.
- (b) *Temporary campaign signs*: Temporary campaign signs displayed on private property, not exceeding 35 square feet in surface area, used in connection with political campaigns or civic non-commercial health, safety or welfare campaigns, provided that all such signs shall exhibit the date of the conclusion of the campaign and shall be removed within 15 days of the date of conclusion.
- (c) *Memorial signs or tablets*: Memorial signs or tablets, names of buildings, and date of erection, when part of any masonry surface or constructed of bronze or other incombustible materials.

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- (d) *Bulletin boards*: A sign which primarily displays the name of public, charitable, educational or religious organization and/or institution and the upcoming events of such.
- (e) *Temporary construction signs*: Temporary construction signs shall be allowed without permit as follows:
 - 1. Signs denoting the architect, developer, statistical data about the building, engineer and/or contractor when placed upon the premises of work under construction or involving alteration or removal, not exceeding 15 square feet in surface area in R-1 through RG districts and 50 square feet in surface area in other districts.
 - 2. Signs warning of special hazards or required precautions not to exceed a size reasonable necessary for the purpose intended. All such temporary construction signs shall be removed when no longer necessary, or within seven (7) days after completion of the project.
- (f) *Temporary real estate signs*: One (1) unlighted real estate sign advertising the

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sale, rental, lease, and one (1) unlighted sign indicating that a building or buildings are open for inspection, erected on the property.
...

- (g) Signs indicating or limiting access to, or directing traffic movements on, premises. Signs indicating or limiting access to, or directing vehicular or traffic movement on, private premises, in such number and sizes as may be reasonably necessary, provided that no such sign shall exceed four (4) square feet in area or bear advertising matter. . . .
- (h) Grand opening signs: Signs advertising the 30-day grand opening period for new businesses (as defined in section 16-28.019(6)) shall be exempt from a permit.

(Id.)

The original permits for the Subject Signs were issued by the City on or around May 27, 1993. (*Id.* ¶ 6, *admitted*, Def.'s Resp. to SUMF ("RSUMF") ¶ 6). Section 16-28.019 of the 1982 Sign Code was applied to this permitting decision for the Subject Signs. (*Id.* ¶ 7, *admitted*, RSUMF ¶ 7). After these permits were issued, the Subject Signs were erected in compliance with such permits. They have been part of the Atlanta skyline since then. (*Id.* ¶ 8).

Subsequent to the original permits issued by the City in 1993, the City issued additional permits for the Subject

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Signs at least 15 times between January 2002 and April 2008 (the “Copy Permits”). (*Id.* ¶ 9). Specifically, the City reviewed and approved Copy Permits at least 11 times for the Wall Sign and at least four (4) times for the Rooftop Sign. (*Id.*). Each time the City issued a Copy Permit, it reviewed the legality of the sign that received the permit, and it determined that such sign was either in compliance with applicable law or legally non-conforming. (*Id.* ¶ 10, admitted in part, RSUMF ¶ 10).

Throughout the past twenty-five plus years, the subject signs have always been in the same location, have had the same size and height, and been in public view advertising various tenants who occupy and continue to occupy the building. (RSUMF ¶ 11).

In June 2015, the United States Supreme Court issued its decision in *Reed v. Town of Gilbert, Arizona*, 576 U.S. 155, 135 S. Ct. 2218, 192 L. Ed. 2d 236 (2015). In *Reed*, the Supreme Court held that the Town of Gilbert’s sign code was “content based on its face,” and that it was an unconstitutional content-based regulation of speech that could not survive strict scrutiny. *Id.* at 159, 164.

In response to *Reed*, the City amended its sign ordinance in 2015. Specifically, in or around November 2015, the City adopted Ordinance 15-0-1394, which is titled as an Ordinance to Amend Chapter 28A (City of Atlanta Sign Ordinance) of the 1982 Atlanta Zoning Ordinance in Response to the United States Supreme Court Decision in *Reed v. Town of Gilbert, Arizona*; and for other Purposes (the “2015 Ordinance”). (SUMF ¶ 13, *admitted*, RSUMF

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¶ 13). The provisions in Section 16-28.019 of the 1982 sign code are not included in the 2015 Ordinance. (RSUMF ¶ 16). The City has acknowledged that Section 16-28.019 of the 1982 Sign Code was removed to comply with *Reed*. (SUMF ¶ 17).

Under Section 16-28A.004 of the 2015 Ordinance, a “Nonconforming Sign” is defined as “[a] sign that was lawfully erected prior to the adoption of this chapter and does not conform to the requirements of this chapter or other provisions of part 16.” (*Id.* ¶ 18, *admitted*, RSUMF ¶ 18). The 2015 Ordinance allows a nonconforming sign to remain in use as long as the owner of such sign continually maintains it. (*Id.* ¶ 19, *admitted*, RSUMF ¶ 19).

On or around December 7, 2018, Multimedia submitted permit applications to upgrade the sign changing technology for the Subject Signs. (*Id.* ¶ 20, *admitted*, RSUMF ¶ 20). On or around February 15, 2019, the City of Atlanta issued permits BS-201801047 and BS-201900119 (the “Conversion Permits”) approving the upgrades of the Subject Signs to LED sign faces. (*Id.*)

The decision to issue the Conversion Permits was challenged by three parties in the following appeal to the Board of Zoning Adjustment of the City of Atlanta (“BZA”): Appeal No. V-19-059 (the “BZA Appeal”). (*Id.* ¶ 21, *admitted*, RSUMF ¶ 21). Ultimately, the BZA denied the challenge to the Conversion Permits. (*Id.* ¶ 23, *admitted*, RSUMF ¶ 23). Two of the challenging parties then appealed the BZA’s decision regarding the Conversion Permits to the Superior Court of Fulton County (“Superior

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Court”) in Civil Action No. 2019CV323401 (the “Superior Court Appeal”). (*Id.* ¶ 24, *admitted*, RSUMF ¶ 24). In the Superior Court Appeal, the City defended the decision of the BZA to deny the challenge to the Conversion Permits. (*Id.* ¶ 25, *admitted*, RSUMF ¶ 25).

On December 12, 2019, the Superior Court reversed the decision by the BZA and held that the Conversion Permits were “wrongly issued.” (Deposition of Gregory Pace dated April 26, 2022 (“Pace Dep.”), Ex. 6, Doc. 37-2 at 88-95, “Superior Court Order”). In reaching this conclusion, the Superior Court reasoned that the original 1993 permits were wrongly issued pursuant to the 1982 Sign Code. (*Id.* ¶ 26, *admitted*, RSUMF ¶ 26). The Superior Court Order stated, in pertinent part:

The original permits allowing two signs to be constructed at a single location with outsized dimensions and less than 300 feet from Interstate 85 were wrongly issued. The signs were unlawful at inception and there is no evidence in the record that the City’s ordinances were ever amended in a way that would have brought the signs into conformity . . .

For the reasons discussed above, the Court finds that the City and the signs’ owner are mistaken and that the original permits were improperly issued, making the two signs nonconforming at birth.

(RSUMF ¶ 26). Nothing in the Superior Court Order required the Subject Signs to be removed or for the City

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to take any enforcement actions related to the Subject Signs. (*Id.* ¶ 28, *admitted*, RSUMF ¶ 28).

The City of Atlanta Department of City Planning Office of Buildings hand-delivered a Zoning Correction Notice for 1655 Peachtree St., NE Atlanta, GA 30309 (the “Zoning Correction Notice”) to Multimedia on or around November 17, 2020. (*Id.* ¶ 29, *admitted*, RSUMF ¶ 29). This Zoning Correction Notice ordered Multimedia to remove the Subject Signs from the Property. (*Id.*).

In response, Multimedia (through counsel) sent a letter to the City of Atlanta Department of City Planning Office of Buildings on or around December 9, 2020, to which the City did not respond. (*Id.* ¶¶ 30-31; *see supra* n.**Error! Bookmark not defined.**).

On or around December 18, 2020, the City issued arrest citations to Anderson, the president of Multimedia, and Harrison Coleman, Peach’s registered agent. (SUMF ¶ 32, *admitted*, RSUMF ¶ 32). These December 2020 citations list the alleged violations as “illegal signs” against section 16-28A.013(a)(ii), the “1982 Atlanta Zoning Ordinance,” and “Chapter 28A.” (*Id.* ¶ 33, *admitted*, RSUMF ¶ 33). They also describe the alleged conduct that “the accused did” as follows: “Fail to remove two unlawful non-conforming signs from the building . . . that were ruled to be illegal pursuant to Final Order (2019CV323401) issued by [Judge McBurney] of the Superior Court of Fulton County on December 12, 2019.” (*Id.*).

These December 2020 arrest citations were followed by two additional arrest citations, issued to the same

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individuals with the same allegations and different citation numbers in March 2021. (*Id.* ¶ 34, *admitted*, RSUMF ¶ 34). The Court refers collectively to the December 2020 and March 2021 citations as the “Arrest Citations.”

After this lawsuit was filed, the City agreed to stay the Arrest Citations “pending the outcome” of this lawsuit. (*Id.* ¶ 35).

Legal Standard

Federal Rule of Civil Procedure 56(a) provides “[t]he court shall grant summary judgment if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law.”

A factual dispute is genuine if the evidence would allow a reasonable jury to find for the nonmoving party. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248, 106 S. Ct. 2505, 91 L. Ed. 2d 202 (1986). A fact is “material” if it is “a legal element of the claim under the applicable substantive law which might affect the outcome of the case.” *Allen v. Tyson Foods, Inc.*, 121 F.3d 642, 646 (11th Cir. 1997).

The moving party bears the initial burden of showing the court, by reference to materials in the record, that there is no genuine dispute as to any material fact that should be decided at trial. *Hickson Corp. v. N. Crossarm Co.*, 357 F.3d 1256, 1260 (11th Cir. 2004) (citing *Celotex Corp. v. Catrett*, 477 U.S. 317, 323, 106 S. Ct. 2548, 91 L. Ed. 2d 265 (1986)). The moving party’s burden is

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discharged merely by “‘showing’—that is, pointing out to the district court—that there is an absence of evidence to support [an essential element of] the nonmoving party’s case.” *Celotex*, 477 U.S. at 325. In determining whether the moving party has met this burden, the district court must view the evidence and all factual inferences in the light most favorable to the party opposing the motion. *Johnson v. Clifton*, 74 F.3d 1087, 1090 (11th Cir. 1996). Once the moving party has adequately supported its motion, the non-movant then has the burden of showing that summary judgment is improper by coming forward with specific facts showing a genuine dispute. *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 587, 106 S. Ct. 1348, 89 L. Ed. 2d 538 (1986). All reasonable doubts should be resolved in the favor of the non-movant. *Fitzpatrick v. City of Atlanta*, 2 F.3d 1112, 1115 (11th Cir. 1993). In addition, the court must “avoid weighing conflicting evidence or making credibility determinations.” *Stewart v. Booker T. Washington Ins.*, 232 F.3d 844, 848 (11th Cir. 2000). When the record as a whole could not lead a rational trier of fact to find for the nonmoving party, there is no genuine dispute for trial. *See Fitzpatrick*, 2 F.3d at 1115.

Discussion**I. The *Rooker-Feldman* Doctrine**

Federal courts are courts of limited jurisdiction. *Univ. of South Ala. v. Am. Tobacco Co.*, 168 F.3d 405, 409 (11th Cir. 1999). Thus, the Court should inquire into whether it has subject matter jurisdiction at the earliest possible stage in the proceedings; indeed, a federal court

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is obligated to inquire into subject matter jurisdiction *sua sponte* whenever it may be lacking. *Id.*

In the Court’s prior Order, it asked the parties to brief whether the Superior Court Order precludes this Court’s review under the *Rooker-Feldman* doctrine. “The *Rooker-Feldman* doctrine eliminates federal court jurisdiction over those cases that are essentially an appeal by a state court loser seeking to relitigate a claim that has already been decided in a state court.” *Target Media Partners v. Specialty Mktg. Corp.*, 881 F.3d 1279, 1281 (11th Cir. 2018)²; *see also Casale v. Tillman*, 558 F.3d 1258, 1260 (11th Cir. 2009) (“The *Rooker-Feldman* doctrine makes clear that federal district courts cannot review state court final judgments because that task is reserved for state appellate courts or, as a last resort, the United States Supreme Court.”) (citing *D.C. Court of Appeals v. Feldman*, 460 U.S. 462, 482, 103 S. Ct. 1303, 75 L. Ed. 2d 206 (1983)); *Christophe v. Morris*, 198 F. App’x 818, 825 (11th Cir. 2006) (holding that the *Rooker-Feldman* doctrine divested the district court of subject-matter jurisdiction to hear a number of eviction-related claims when the state court had already ruled that a tenant violated her lease and the landlord was legally entitled to an order of eviction); *Carr v. U.S. Bank as Trustee for TBW Mortg. Backed Tr. Series 2006-6*, No. 18-14987, 793 Fed. Appx. 971, 2019 WL 6605444, at *2 (11th Cir. Dec. 5, 2019) (holding that the *Rooker-Feldman* doctrine

2. The doctrine takes its name from two Supreme Court cases, *Rooker v. Fidelity Trust Co.*, 263 U.S. 413, 44 S. Ct. 149, 68 L. Ed. 362 (1923), and *D.C. Court of Appeals v. Feldman*, 460 U.S. 462, 103 S. Ct. 1303, 75 L. Ed. 2d 206 (1983).

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barred district court from reviewing state court judgment that effectively authorized the tenant's removal from the property). The purpose of the doctrine is "to ensure that the inferior federal courts do not impermissibly review decisions of the state courts—a role reserved to the United States Supreme Court." *Target Media Partners*, 881 F.3d at 1281.

Under the *Rooker-Feldman* doctrine, a federal court is barred from adjudicating a claim that was "either (1) one actually adjudicated by a state court or (2) one inextricably intertwined with a state court judgment." *Id.* at 1286 (internal quotation marks omitted); *see also Indus. Communs. & Elecs. v. Monroe County*, 134 Fed. Appx. 314, 317 (11th Cir. 2005) ("Under the *Rooker-Feldman* doctrine a lower federal court lacks subject matter jurisdiction in a claim where "the relief requested . . . requires determining that the state court's decision is wrong or . . . void[ing] the state court's ruling.") (quoting *Desi's Pizza, Inc. v. City of Wilkes-Barre*, 321 F.3d 411, 419 (3d Cir. 2003)). A claim is inextricably intertwined "if it asks to effectively nullify the state court judgment, or it succeeds only to the extent that the state court wrongly decided the issues." *Target Media Partners*, 881 F.3d at 1286 (internal quotation marks omitted). "A claim that at its heart challenges the state court decision itself—and not the statute or law which underlies that decision—falls within the doctrine because it complains of injuries caused by state-court judgments and invites review and rejection of those judgments." *May v. Morgan Cty.*, 878 F.3d 1001, 1005 (11th Cir. 2017) (quotations and citation omitted).

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For example, in *May*, a landowner purchased lakefront property intending to develop a vacation home which she planned to use for short term vacation rentals. *Id.* at 1002-03. After adoption of a county ordinance barring short term rentals in the landowner's zoning district, she was criminally cited. *Id.* at 1003. She filed suit in Georgia state court challenging the ordinance on federal constitutional grounds, but her challenge was dismissed on state law grounds for failing to seek a rezoning and conditional use permit from the county and for failing to challenge the ordinance within 30 days of its passage. *Id.*

She later filed a federal court suit, arguing among other things that under 42 U.S.C. § 1983, the ordinance “and its ongoing enforcement against her property violated her ‘grandfathered constitutional rights.’” *Id.* at 1004. The district court dismissed the suit, citing *Rooker-Feldman*, and the landowner appealed, contending that “*Rooker-Feldman* does not bar her § 1983 claim because she did not bring an as applied challenge to [the ordinance] in this lawsuit, and, even if she did, *Rooker-Feldman* does not apply” because she was not challenging the state court's decision, only the ordinance. *Id.*

However, brushing “[s]emantics aside,” the Eleventh Circuit held that “[b]oth her § 1983 claim and her claim for declaratory relief are based on her assertion that she has a ‘grandfathered right’ to rent her property on a short term basis” and “both claims would require finding that her claim of “vested constitutional right[s]” was not time barred under Georgia law for her failure to file a lawsuit in state court within 30 days of [the ordinance's] passage.”

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Id. at 1005.³ The court recognized that “[a] claim that at its heart challenges the state court decision itself—and not the statute or law which underlies that decision—falls within the doctrine because it ‘complain[s] of injuries caused by state-court judgments’ and ‘invite[s] . . . review and rejection of those judgments.’” *Id.* (quoting *Exxon Mobil Corp. v. Saudi Basic Indus. Corp.*, 544 U.S. 280, 284, 125 S. Ct. 1517, 161 L. Ed. 2d 454 (2005)). The court affirmed the dismissal. *Id.* at 1007.

In Plaintiffs’ Response to the Court’s July 29th Order, Plaintiffs point to the Eleventh Circuit’s decision in *Behr v. Campbell*, 8 F.4th 1206 (11th Cir. 2021), which they assert “clarified the scope of the *Rooker-Feldman* doctrine to bring it in line with the Supreme Court’s guidance.” (Pls.’ Resp. to Ord. at 2, Doc. 43). In *Behr*, the Eleventh Circuit considered an appeal involving constitutional claims stemming from a custody dispute that had been resolved in state court. 8 F.4th at 1208. The parents—plaintiffs in that case raised “allegations that the defendants violated [the plaintiffs’] Fourth and Fourteenth Amendment rights and federal law in a number of ways—fabricating reports, pressuring the children to make false statements against their father, entering [his] home without permission and on false pretenses, and discriminating against the [the

3. Interestingly, the landowner argued “in the alternative that, even if her § 1983 claim is an as applied challenge to the constitutionality of the ordinance, *Rooker-Feldman* does not apply because the state court in the first civil case lacked subject matter jurisdiction,” but the Eleventh Circuit noted that “as of now, we have never adopted that exception.” *Id.* (citing *Casale v. Tillman*, 558 F.3d 1258, 1261 (11th Cir. 2009)).

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plaintiffs] on the basis of age, sex, disability, and religion.” *Id.* at 1209.

The Eleventh Circuit clarified that it had previously adopted an overbroad consideration of the doctrine, one which covered “all federal claims which were, or should have been, central to the state court decision, even if those claims seek a form of relief that might not have been available from the state court.” *Id.* (quoting *Goodman ex rel. Goodman v. Sipos*, 259 F.3d 1327, 1333 (11th Cir. 2001)). In light of the Supreme Court’s intervening decision in *Exxon Mobil*, the Eleventh Circuit clarified that the doctrine “occupies ‘narrow ground’ and is ‘confined to cases of the kind from which the doctrine acquired its name.’” *Id.* at 1209 (quoting *Exxon Mobil*, 544 U.S. at 284). Having so ‘reined in’ the doctrine, the Eleventh Circuit reversed the dismissal of damages claims, as the plaintiffs were not seeking to reverse the state court decisions but were “asking [the court] to consider whether their constitutional rights were violated during the proceedings and whether they are entitled to damages for those violations.” *Id.* at 1213.

Here, Plaintiffs contend that “none of [their] claims challenge the Superior Court’s decision to reverse the BZA’s denial of the challenge to the issuance of the Conversion Permits in the Superior Court Appeal” and “[i]n fact, nothing in Plaintiffs’ Complaint asks this Court to make any ruling about the Conversion Permits. (Pls.’ Resp to Ord. at 12, Doc. 43) (citing Compl, Doc. 1) “Rather,” they assert, “Plaintiffs’ Complaint asks this Court to determine whether the 1982 Sign Code is

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constitutional, which is an issue not addressed by the Superior Court.” (*Id.*).

But “[t]his court can have no right to pronounce an abstract opinion upon the constitutionality of a state law. Such law must be brought into actual, or threatened operation upon rights properly falling under judicial cognizance, or a remedy is not to be had here.” *Mass. v. Mellon*, 262 U.S. 447, 484, 43 S. Ct. 597, 67 L. Ed. 1078 (1923) (quoting *Cherokee Nation v. Ga.*, 30 U.S. 1, 8 L. Ed. 25 (1831) (Thompson, J., concurring)). The Court must review Plaintiffs’ request for a declaratory judgment in the context of an actual case or controversy. In looking at the broader controversy, the Court does not intend to retreat into the now-verboten *Goodman* framework of “all federal claims which were, or should have been, central to the state court decision,” 259 F.3d at 1333, but is instead merely being cognizant of its obligation to render declaratory judgments in the context of actual disputes and of the Eleventh Circuit’s instruction to look out for “cleverly cloak[ed] . . . pleadings in the cloth of a different claim.” *May*, 878 F.3d at 1005.

As the Court noted in its prior order, while the Superior Court did not order removal of the sign, it held that “[t]he Conversion Permits were wrongly issued because the two signs affixed to the 1655 Peachtree Building neither comply with current City ordinances nor are they legally nonconforming signs.” (Doc. 37-2 at 95). Both sets of Arrest Citations assert that the Subject Signs are “unlawful nonconforming signs,” and reference the Superior Court Order as their basis. (Compl. Exs. 8-11,

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Docs. 1-8 to 1-11). There is no dispute in this case that the Subject Signs are “nonconforming” under the 2015 Ordinance. In Plaintiffs’ Motion for Summary Judgment, they acknowledge that:

[u]nder Section 16-28A.004 of the 2015 Ordinance, a “Nonconforming Sign” is defined as “[a] sign that was lawfully erected prior to the adoption of this chapter and does not conform to the requirements of this chapter or other provisions of part 16.” The 2015 Ordinance allows a nonconforming sign to remain in use as long as the owner of such sign continually maintains it. Thus, the Subject Signs are lawful, nonconforming signs as long as they were lawfully erected prior to the adoption of the 2015 Ordinance and are continuously maintained.

(Pls.’ Br. Supp. Mot. at 11) (record citations omitted). The broader case or controversy here is whether the signs are lawful, nonconforming signs and thus may remain erected, and the injury is the Superior Court Order, as recognized by the Arrest Citations’ reference to that order.

The Court pauses for a moment to sketch out how Plaintiffs’ requested declaratory relief, which purportedly does not reverse the Superior Court Order, would play out. The Court would ostensibly be called upon to enter further relief under 28 U.S.C. § 2202 in the form of enjoining the City from enforcing the Arrest Citations against Plaintiffs. The City could take no action against

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Plaintiffs to direct them to remove the Subject Signs, but Plaintiffs would eventually need to seek a permit for alterations or renovations to the signs. However, Plaintiff Multimedia could not, for example, re-request the conversion permit, because a valid final judgment on the merits would preclude such an issuance. The signs would exist in some sort of legal limbo, where the City could not remove them, but the Plaintiffs could not alter them. Or, if Plaintiffs contend that the BZA would in fact be required to issue such permits as a result of this Court's declaratory judgment, they are essentially conceding that their injury is the Superior Court Order.

Plaintiffs next contend that the *Rooker-Feldman* doctrine does not apply because they could not have raised their constitutional claims before the Superior Court. It is true that the doctrine does not apply "where a party did not have a reasonable opportunity to raise his federal claim in state proceedings." *May*, 878 F.3d at 1005 (citing *Casale v. Tillman*, 558 F.3d 1258, 1260 (11th Cir. 2009)). In support of their argument that they lacked an opportunity to raise constitutional claims, Plaintiffs point to the certiorari statute then in effect, O.C.G.A. § 5-4-12 (2019), which provided that "[n]o ground of error shall be considered which is not distinctly set forth in the petition."

Plaintiffs provide the Petition for a Writ of Certiorari in an attachment to the Declaration of Geoffrey Anderson ("Petition," Doc. 44-1 at 6). The Petition enumerates a number of errors, including that "[t]he BZA erred in failing to find and conclude that the rooftop and wall signs at the Property are illegal under the current Sign

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Ordinance,” that “[t]he BZA erred in failing to find and conclude that the rooftop and wall signs at the Property are not ‘lawful nonconforming signs’ and are not eligible to receive conversion permits under the current Sign Ordinance,” and that “[t]he BZA erred in failing to find and conclude that the rooftop and wall signs at the Property were illegal under the 1982 Zoning Ordinance when first permitted,” but for obvious reasons does not address the constitutionality of the 1982 Zoning Ordinance. (Petition ¶¶ 29-31).⁴

Neither party points to any case law that addresses whether an applicant can raise constitutional grounds for denying a third party’s petition for certiorari outside the scope of the petition. However, Georgia case law supports the notion that constitutional review of agency action is “inherent in the power of the judiciary.” *Bd. of Zoning Adjustment of Atlanta v. Fulton Fed. Sav. & Loan Ass’n*, 177 Ga. App. 219, 338 S.E.2d 730, 732 (Ga. App. 1985); *see also Bentley v. Chastain*, 242 Ga. 348, 249 S.E.2d 38 (Ga. 1978)) (specifying that the standard of review in a certiorari proceeding is “[w]hether the agency acted beyond the discretionary powers conferred upon it, abused its discretion, or acted arbitrarily or capriciously with regard to an individual’s constitutional rights.”).

Moreover, it would appear from the record in this case that Plaintiffs *were* able to expand the scope of the Superior Court Proceedings beyond the errors enumerated in the

4. It does appear, then, that the original issuance was within the scope of the Petition. (*Contra* Pls.’ Resp. to Ord. at 9, Doc. 43).

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Petition by arguing, albeit unsuccessfully, that “equity requires the Conversion Permits to issue.” (Superior Court Ord. at 6, 6 n.7, Doc. 37-2 at 93) (citing *WMM Properties, Inc. v. Cobb County*, 255 Ga. 436, 339 S.E.2d 252, 254 (Ga. 1986)).⁵ In addressing this argument, the Superior Court directly addressed Plaintiffs’ purported constitutional rights, pointing out “the signs’ owner enjoys no vested rights here, as ‘a permit issued for either an illegal use or an illegal non-conforming use is void; it cannot be used as an excuse to continue the use in violation of the zoning ordinance, and it does not vest constitutional rights.’” (Superior Court Order at 6, Doc. 37-2 at 93) (citing *Corey Outdoor Advert. v. Bd. of Zoning Adjustments City of Atlanta*, 254 Ga. 221, 227, 327 S.E.2d 178 (1985)).⁶

The Court thus finds that Plaintiffs had an opportunity to raise their constitutional claims in state court. As the Court noted in its prior Order, had the Superior Court ruled that the 1982 Sign Code was unconstitutional, it would have affirmed the BZA’s issuance of the Conversion

5. *WMM Properties* noted that “[o]nce a building permit has issued, a landowner has a right to develop the property pursuant to that permit (during its term or for a reasonable time after its issuance if no term is specified), notwithstanding a zoning or regulatory change subsequent to the issuance of the building permit, and notwithstanding the fact that there has been no substantial expenditure of funds in reliance upon the building permit.” 339 S.E.2d at 254. It is unlikely that the BZA would have passed on this question when issuing the permit, and yet Plaintiffs were able to raise the issue before the Superior Court.

6. As the Court noted in its prior Order, this ruling is also likely dispositive of Plaintiffs’ takings claims.

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Permits on the grounds that no valid law prohibited the erection of the Subject Signs in 1993. Had it refused to so hold, an appeal would lie to the Georgia appellate courts, and ultimately, the United States Supreme Court. But not to this Court. The Court finds that the *Rooker-Feldman* doctrine bars Plaintiffs' claims to the extent that they seek review of the Superior Court Order.⁷

Plaintiffs do identify one hitch with applying the *Rooker-Feldman* doctrine to this case: Plaintiffs Anderson and Peach were not parties to the Superior Court Appeal. "The *Rooker-Feldman* doctrine does not bar actions by nonparties to the earlier state-court judgment simply because, for purposes of preclusion law, they could be considered in privity with a party to the judgment." *Lance v. Dennis*, 546 U.S. 459, 466, 126 S. Ct. 1198, 163 L. Ed. 2d 1059 (2006). Assuming for the moment that none of the limited circumstances for applying *Rooker-Feldman* to nonparties acknowledged by the Supreme Court in footnote 2 of *Lance* would apply,⁸ Plaintiffs are correct that Plaintiffs Anderson and Peach are separately entitled to a declaration of whether the Arrest Citations against them were unconstitutionally issued. But in the Court's reckoning, this is not a case about citations; this is a case about whether the Big Peach off I-85 has to come down.

7. Lacking subject matter jurisdiction, the Court does not address whether the preclusion doctrines apply to these claims.

8. "[E].g., where an estate takes a de facto appeal in a district court of an earlier state decision involving the decedent." 546 U.S. at 466 n.2. The Court also assumes for present purpose that no basis for abstention applies. See *Redner v. Citrus Cnty., Fla.*, 919 F.2d 646, 648 (11th Cir. 1990) (citing *Younger v. Harris*, 401 U.S. 37, 91 S. Ct. 746, 27 L. Ed. 2d 669 (1971)).

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Plaintiffs have made strong arguments about whether the *Rooker-Feldman* doctrine applies. This is not a clear-cut case; it resides somewhere in between damages claims sought in *Behr* and declaratory relief sought in *May*. Therefore, the Court will not proceed to deal with a complicated First Amendment question which ultimately may not matter to the question of whether Plaintiffs have to remove the Subject Signs. Instead, the Court will exercise its discretion to enter final judgment of dismissal for lack of subject matter jurisdiction as to Plaintiff Multimedia under Federal Rule of Civil Procedure 54(b), which provides that “the court may direct entry of a final judgment as to one or more, but fewer than all, claims or parties only if the court expressly determines that there is no just reason for delay.” The Court finds that there is no just reason for delay for the reasons given above.⁹ The Court will stay the remainder of the proceedings as set forth below.

Conclusion

For the reasons given above, it is

ORDERED that Plaintiffs’ Motion for Summary Judgment (Doc. 36) is **DENIED** as to claims by Plaintiff Multimedia and **STAYED** as to the claims of all other Plaintiffs. It is

9. Moreover, to the extent necessary, the Court hereby certifies that this Order involves a controlling question of law as to which there is substantial ground for difference of opinion and that an immediate appeal from the order may materially advance the ultimate termination of the litigation. *Cf. Gen. Television Arts, Inc. v. S. Ry. Co.*, 725 F.2d 1327, 1330 n.2 (11th Cir. 1984)).

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FURTHER ORDERED that, pursuant to Federal Rule of Civil Procedure 56(f)(1), the Court **GRANTS** summary judgment in favor of Defendant City of Atlanta, Georgia and against Plaintiff Multimedia Technologies, Inc. The Clerk is directed to enter a final judgment of dismissal in favor of Defendant City of Atlanta, Georgia and against Plaintiff Multimedia Technologies, Inc. for lack of subject matter jurisdiction.

It is **FURTHER ORDERED** that this case is **STAYED** as to the remaining claims of Plaintiffs Peach and Anderson for a period of 30 days from the date of entry of this Order to permit Plaintiff Multimedia to appeal this Order if it so chooses, and in the event such an appeal is taken, until the later of 30 days from the date of entry of this Order or seven (7) days after the issuance of the Court of Appeals' mandate, whichever is later.¹⁰

SO ORDERED this 23rd day of September, 2022.

/s/ Victoria Marie Calvert

Victoria Marie Calvert
United States District Judge

10. If the Parties cannot agree on a continued stay of the enforcement of the Arrest Citations during this time, Plaintiff may apply to this Court for an injunction pending appeal under Federal Rule of Civil Procedure 62(d). (*See* Br. Supp. Mot. at 15, Doc. 36-1).

**APPENDIX E — JUDGMENT OF THE
UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF GEORGIA, ATLANTA
DIVISION, FILED SEPTEMBER 26, 2022**

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

Civil Action No.
1:21-cv-01280-VMC

MULTIMEDIA TECHNOLOGIES, INC.,
GEOFFREY ANDERSON, AND PEACH
HOSPITALITY OF GEORGIA, LLC,

Plaintiffs,

v.

CITY OF ATLANTA, GEORGIA,

Defendant.

JUDGMENT

This action having come before the Court, Honorable Victoria M. Calvert, United States District Judge, for consideration of Plaintiff Multimedia Technologies, Inc.'s Motion for Summary Judgment, and the Court having given notice that, pursuant to Federal Rule of Civil Procedure 56(f)(1), it was considering granting summary judgment in favor of non-movant Defendant City of Atlanta, Georgia, and the Court having granted

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summary judgment in favor of Defendant City of Atlanta, Georgia and against Plaintiff Multimedia Technologies, Inc., and the Court having determined that there was no just reason for delaying entry of judgment as to fewer than all parties, it is

Ordered and Adjudged that this action be, and the same hereby is, dismissed as to Plaintiff Multimedia Technologies, Inc. for lack of subject matter jurisdiction.

Dated at Atlanta, Georgia this 26th day of September, 2022.

KEVIN P. WEIMER
CLERK OF COURT

By: L. Beck
Deputy Clerk

Prepared, Filed, and Entered
in the Clerk's Office
September 26, 2022
Kevin P. Weimer
Clerk of Court

By: s/ L. Beck
Deputy Clerk

**APPENDIX F — DENIAL OF REHEARING OF
THE UNITED STATES COURT OF APPEALS FOR
THE ELEVENTH CIRCUIT, FILED JUNE 10, 2026**

IN THE
UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 24-13509

MULTIMEDIA TECHNOLOGIES, INC.

Plaintiff,

GEOFFREY ANDERSON, PEACH HOSPITALITY
OF GEORGIA, LLC.,

Plaintiffs-Appellees,

versus

CITY OF ATLANTA, GEORGIA,

Defendant-Appellant.

Appeal from the United States District Court
for the Northern District of Georgia
D.C. Docket No. 1:21-cv-01280-VMC

ON PETITION FOR REHEARING AND
PETITION FOR REHEARING EN BANC

Before WILLIAM PRYOR, Chief Judge, and ABUDU and
TJOFLAT, Circuit Judges.

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Appendix F

PER CURIAM:

The Petition for Rehearing En Banc is DENIED, no judge in regular active service on the Court having requested that the Court be polled on rehearing en banc. FRAP 40. The Petition for Panel Rehearing also is DENIED. FRAP 40.

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**APPENDIX G — ORDER OF THE UNITED
STATES COURT OF APPEALS FOR THE
ELEVENTH CIRCUIT, FILED DECEMBER 2, 2025**

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 24-13509

MULTIMEDIA TECHNOLOGIES, INC.

Plaintiff,

GEOFFREY ANDERSON,
PEACH HOSPITALITY OF GEORGIA, LLC.,

Plaintiffs-Appellees,

versus

CITY OF ATLANTA, GEORGIA,

Defendant-Appellant.

Filed December 2, 2025

ORDER

Appeal from the United States District Court
for the Northern District of Georgia
D.C. Docket No. 1:21-cv-01280-VMC

Appendix G

ORDER:

Counsel for the parties in this appeal are directed to be prepared to address the following issue at oral argument on Tuesday, January 27, 2026:

The Fulton County Superior Court based its conclusion that Multimedia Technology’s signs were unlawful on section 16-28.019(7) of the 1982 Sign Code. Subsection (7) applies only to “general advertising signs,” which section 16-28.017(3)(b) defines as “signs[s] which [are] for the purpose of directing attention to a business, profession, product, service, activity, accommodation, attraction or entertainment not principally conducted, sold or offered on the premises.” Please prepare to discuss whether, under the Supreme Court’s decision in *City of Austin v. Reagan National Advertising of Austin, LLC*, 142 S. Ct. 1464 (2022), subsection (7) makes a content-neutral distinction between on- and off-premises signs, and whether the 1982 Sign Code, as applied to Multimedia, is therefore constitutional. *See CAMP Legal Defense Fund v. City of Atlanta*, 451 F.3d 1257, 1269–74 (11th Cir. 2006) (holding that plaintiffs lacked standing to bring a First Amendment challenge to portions of a municipal ordinance not being applied to them).

DAVID J. SMITH
Clerk of the United States Court of
Appeals for the Eleventh Circuit

ENTERED FOR THE COURT—BY DIRECTION

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**APPENDIX H — ORDER OF THE UNITED STATES
COURT OF APPEALS FOR THE ELEVENTH
CIRCUIT, FILED JANUARY 28, 2026**

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 24-13509

MULTIMEDIA TECHNOLOGIES, INC.

Plaintiff,

GEOFFREY ANDERSON,
PEACH HOSPITALITY OF GEORGIA, LLC.,

Plaintiffs-Appellees,

versus

CITY OF ATLANTA, GEORGIA,

Defendant-Appellant.

Filed January 28, 2026

ORDER

Appeal from the United States District Court
for the Northern District of Georgia
D.C. Docket No. 1:21-cv-01280-VMC

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Appendix H

ORDER:

The parties are instructed to file simultaneous supplemental briefs that address whether section 16-28.019(7) of the 1982 Atlanta Sign Code is content-neutral under *City of Austin v. Reagan National Advertising of Austin, LLC*. 142 S. Ct. 1464 (2022). The briefs shall be filed on or before February 17, 2026, and shall not exceed 10 pages.

DAVID J. SMITH
Clerk of the United States Court of
Appeals for the Eleventh Circuit

ENTERED FOR THE COURT—BY DIRECTION

**APPENDIX I — CONSTITUTIONAL, STATUTORY,
AND ORDINANCE PROVISIONS INVOLVED**

CONSTITUTIONAL, STATUTORY, AND ORDINANCE
PROVISIONS INVOLVED

CONSTITUTIONAL PROVISIONS

U.S. Const. amend. I

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

STATUTORY PROVISIONS

28 U.S.C. § 1254

Cases in the courts of appeals may be reviewed by the Supreme Court by the following methods:

(1) By writ of certiorari granted upon the petition of any party to any civil or criminal case, before or after rendition of judgment or decree;

(2) By certification at any time by a court of appeals of any question of law in any civil or criminal case as to which instructions are desired, and upon such certification the Supreme Court may give binding instructions or require the entire record to be sent up for decision of the entire matter in controversy.

*Appendix I***23 U.S.C. § 131 (in pertinent part)**

(a) The Congress hereby finds and declares that the erection and maintenance of outdoor advertising signs, displays, and devices in areas adjacent to the Interstate System and the primary system should be controlled in order to protect the public investment in such highways, to promote the safety and recreational value of public travel, and to preserve natural beauty.

(b) Federal-aid highway funds apportioned on or after January 1, 1968, to any State which the Secretary determines has not made provision for effective control of the erection and maintenance along the Interstate System and the primary system of outdoor advertising signs, displays, and devices which are within six hundred and sixty feet of the nearest edge of the right-of-way and visible from the main traveled way of the system, and Federal-aid highway funds apportioned on or after January 1, 1975, or after the expiration of the next regular session of the State legislature, whichever is later, to any State which the Secretary determines has not made provision for effective control of the erection and maintenance along the Interstate System and the primary system of those additional outdoor advertising signs, displays, and devices which are more than six hundred and sixty feet off the nearest edge of the right-of-way, located outside of urban areas, visible from the main traveled way of the system, and erected with the purpose of their message being read from such main traveled way, shall be reduced by amounts equal to 10 per centum of the amounts which would otherwise be apportioned to such State under

Appendix I

section 104 of this title, until such time as such State shall provide for such effective control. Any amount which is withheld from apportionment to any State hereunder shall be reapportioned to the other States. Whenever he determines it to be in the public interest, the Secretary may suspend, for such periods as he deems necessary, the application of this subsection to a State.

(c) Effective control means that such signs, displays, or devices after January 1, 1968, if located within six hundred and sixty feet of the right-of-way and, on or after July 1, 1975, or after the expiration of the next regular session of the State legislature, whichever is later, if located beyond six hundred and sixty feet of the right-of-way located outside of urban areas, visible from the main traveled way of the system, and erected with the purpose of their message being read from such main traveled way, shall, pursuant to this section, be limited to (1) directional and official signs and notices, which signs and notices shall include, but not be limited to, signs and notices pertaining to natural wonders, scenic and historical attractions, which are required or authorized by law, which shall conform to national standards hereby authorized to be promulgated by the Secretary hereunder, which standards shall contain provisions concerning lighting, size, number, and spacing of signs, and such other requirements as may be appropriate to implement this section, (2) signs, displays, and devices advertising the sale or lease of property upon which they are located, (3) signs, displays, and devices, including those which may be changed at reasonable intervals by electronic process or by remote control, advertising activities conducted on the property

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on which they are located, (4) signs lawfully in existence on October 22, 1965, determined by the State, subject to the approval of the Secretary, to be landmark signs, including signs on farm structures or natural surfaces, or historic or artistic significance the preservation of which would be consistent with the purposes of this section, and (5) signs, displays, and devices advertising the distribution by nonprofit organizations of free coffee to individuals traveling on the Interstate System or the primary system. For the purposes of this subsection, the term “free coffee” shall include coffee for which a donation may be made, but is not required.

(d) In order to promote the reasonable, orderly and effective display of outdoor advertising while remaining consistent with the purposes of this section, signs, displays, and devices whose size, lighting and spacing, consistent with customary use is to be determined by agreement between the several States and the Secretary, may be erected and maintained within six hundred and sixty feet of the nearest edge of the right-of-way within areas adjacent to the Interstate and primary systems which are zoned industrial or commercial under authority of State law, or in unzoned commercial or industrial areas as may be determined by agreement between the several States and the Secretary. The States shall have full authority under their own zoning laws to zone areas for commercial or industrial purposes, and the actions of the States in this regard will be accepted for the purposes of this Act. Whenever a bona fide State, county, or local zoning authority has made a determination of customary use, such determination will be accepted in lieu of controls by

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agreement in the zoned commercial and industrial areas within the geographical jurisdiction of such authority. Nothing in this subsection shall apply to signs, displays, and devices referred to in clauses (2) and (3) of subsection (c) of this section.

* * *

ORDINANCE PROVISIONS

A. City of Atlanta 1982 Sign Code

Atlanta, Ga., Zoning Ordinance §§ 16-28.017, 16-28.019 (Supp. No. 53, Oct. 1992), as filed at D. Ct. Doc. 1-2 at 23-28.

Section 16-28.017 Signs.

The following definitions, methods of measurement, requirements and limitations shall apply with regard to signs, in addition to provisions appearing elsewhere in the schedule of district regulations or the text of this part:

(1) *Definition:* Any name, identification, description, display, illustration or device which is affixed to or represented directly or indirectly upon a building, structure or land in view of the general public and which directs attention to a product, place, activity, person, institution or business.

* * *

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(3) *Signs, business, general advertising, bulletin board:*

(a) *Business signs; on-site sign:* A sign which directs attention to a business, profession, product, service, activity or entertainment conducted, sold or offered on the premises on which the sign is located. Such signs may also be referred to as on-site signs.

(b) *General advertising sign; off-site sign:* A sign which is for the purpose of directing attention to a business, profession, product, service, activity, accommodation, attraction or entertainment not principally conducted, sold or offered on the premises. Such signs may also be referred to as off-site signs.

* * *

Section 16-28.019 Application of sign regulations: Requirements and limitations.

Except as provided below, no sign shall be erected, located or maintained prior to the issuance of a sign permit by the bureau of buildings. No sign shall be erected, located or maintained except in accordance with the provisions of this part. Any owner, architect, builder, contractor or agent of the owner who erects or maintains any sign in violation of the stated regulations shall be deemed guilty of an offense. Applications for permits shall be in the form and shall contain such information as shall be required by the bureau of buildings. No permit shall be required for a mere change of copy on a sign,

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where the customary use of the sign involves frequent and periodic changes of copy. No permit shall be required for repainting, refacing or repostering a general advertising sign where the sign has been permitted previously. A sign permit shall be required for any such change in a business identification sign. No permit shall be required for the substitution of panels or faces where the customary use of the signs involve frequent and periodic changes of copy.

(1) *Exemptions from sign permit requirements; regulations applying to exempt signs:* the following signs or activities related to signs do not require a permit but are otherwise subject to the regulations below and other applicable regulations.

(a) *Address or identification signs:* One (1) sign, not exceeding two (2) square feet in surface area, indicating the address and/or the name of the occupant and/or premises, or the accessory use of a dwelling for a home occupation or for professional purposes.

(b) *Temporary campaign signs:* Temporary campaign signs displayed on private property, not exceeding 35 square feet in surface area, used in connection with political campaigns or civic noncommercial health, safety or welfare campaigns, provided that all such signs shall exhibit the date of the conclusion of the campaign and shall be removed within 15 days of the date of conclusion.

(c) *Memorial signs or tablets:* Memorial signs or tablets, names of buildings, and date of erection, when part of any masonry surface or constructed of bronze or other incombustible materials.

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(d) *Bulletin boards:* A sign which primarily displays the name of public, charitable, educational or religious organization and/or institution and the upcoming events of such.

(e) *Temporary construction signs:* Temporary construction signs shall be allowed without permit as follows:

1. Signs denoting the architect, developer, statistical data about the building, engineer and/or contractor when placed upon the premises of work under construction or involving alteration or removal, not exceeding 15 square feet in surface area in R-1 through R-G districts and 50 square feet in surface area in other districts.

2. Signs warning of special hazards or required precautions not to exceed a size reasonable necessary for the purpose intended. All such temporary construction signs shall be removed when no longer necessary, or within seven (7) days after completion of the project.

(f) *Temporary real estate signs:* One (1) unlighted real estate sign advertising the sale, rental, lease, and one (1) unlighted sign indicating that a building or-buildings are open for inspection, erected on the property. In R-1 through R-G districts, no such sign shall exceed six (6) square feet in surface area or be placed closer than 10 feet to the street paving or the edge of the graded street surface nearest the property depending

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on the manner of the street improvement, but in no event within the right-of-way of any public street or way. In R-LC and O-I districts, such signs shall not exceed 25 square feet in surface area; in remaining districts, 50 square feet. In R-LC through I-2 districts, one (1) sign of the size specified above is allowed for each 400 feet of street frontage or portion thereof, for each separate street on which the property faces. In cases where a permanent structure has been erected closer than 10 feet to the front or side of the building; however, if buildings are set back along the front or side street to a depth greater than 10 feet, such sign shall not be placed closer than 10 feet to the property line. No such sign shall be erected within 10 feet of an interior side lot line. All such signs shall be removed within seven (7) days after property has been sold, rented or leased. Such signs may also provide identification, but shall bear no advertising matter.

The display on any property of any sign, poster, billboard or other advertising device, associate broker or salesman shall conform with the Georgia Real Estate Brokers and Salesmen Licensing Act of 1973, as amended.

(g) Signs indicating or limiting access to, or directing traffic movements on, premises. Signs indicating or limiting access to, or directing vehicular or traffic movement on, private premises, in such number and sizes as may be reasonably necessary, provided that no such sign shall exceed four (4) square feet in area or bear advertising matter. Stop, yield, one-way, and other traffic-control signs may be used as needed and approved by the bureau of traffic and transportation. Horizontal

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directional signs on and flush with paved areas are exempt from these standards.

(h) *Grand opening signs:* Signs advertising the 30-day grand opening period for new businesses (as defined in section 16-28.019(6)) shall be exempt from a permit.

* * *

(7) *Limitations on signs near freeways, expressways:* In addition to sign limitations established by district regulations, it shall be unlawful for any person to build, use or maintain, within a distance of 300 feet of the nearest outer edge of the pavement of the interstate highway, limited-access freeway or expressway system within the city, any general advertising sign; except that there may be on each lot adjoining the system one (1) sign facing the system not exceeding 50 square feet in area advertising such lot for sale or lease, and on each lot adjoining the system, or on a lot upon which a building permit has been issued for the conduct of business, one (1) sign of not more than 200 square feet in area facing the system designating the particular business which is being actually conducted thereon or to be conducted thereon. Any sign within said 300-foot zone involving direct illumination or animation shall require the approval of the bureau of traffic and transportation prior to issuance of a building permit or the erection of such sign. These provisions shall not be construed as authorizing more signs or larger signs than generally permitted within the district in which the sign is erected.

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B. City of Atlanta 2015 Sign Ordinance (Ord. No. 15-O-1394)

**Atlanta, Ga., Code of Ordinances § 16-28A.004
(definition of “Nonconforming sign”)**

Nonconforming sign: A sign that was lawfully erected prior to the adoption of this chapter and does not conform to the requirements of this chapter or other provisions of part 16.

C. Ordinances of Other Jurisdictions

1. Ordinances cited as analogous to the 1982 Sign Code

Amarillo, Tex., Code of Ordinances § 4-2-2 (2009)

Off-premises sign: A sign which advertises or directs attention to a business, product, service, or activity which is not usually available on the premises

Fargo, N.D., Code of Ordinances § 20-1311 (2021)

Off-premise sign. A sign which directs attention to a business, profession, product, service, activity or entertainment not conducted, sold or offered on the premises upon which the sign is located.

Related provision, § 20-1308 (fragment): Off-premise signs and digital billboards that otherwise satisfy all other requirements of this ordinance are allowed in the GI,

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LI, GC, and LC Zoning districts subject to the following additional standards [...]

Germantown, Wis., Code of Ordinances § 17.46(15) (2011)

(a) All off-premises advertising signs, including temporary signs and billboards, are prohibited within the Village of Germantown except for the following:

1. Official and temporary signs displayed within the Village for public agencies, charitable organizations and religious institutions;
2. Election campaign signs and rummage sale signs;
3. Temporary directional signs for businesses, residential developments, schools and institutions when adjacent streets are temporarily closed for repairs or similar reasons (subject to any other specific limitations set forth herein or other sections of the Village Code);
4. Off-Premises Business Signs. (Cr. Ord. #28-14) Permanent directional signs benefiting one or more businesses when incorporated into a permanent ground sign as set forth in section 17.46(7)(g).

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**Kansas City, Mo., Zoning & Dev. Code § 88-810-1770
(2021)**

Outdoor advertising sign. A sign which directs attention to a business, commodity, service, activity, or product sold, conducted, or offered off the premises where such sign is located.

Los Angeles, Cal., Mun. Code § 14.4.2 (2008)

Off-Site Sign. A sign that displays any message directing attention to a business, product, service, profession, commodity, activity, event, person, institution or any other commercial message, which is generally conducted, sold, manufactured, produced, offered or occurs elsewhere than on the premises where the sign is located.

Related provision, § 14.4.4(A):

No provision of this article shall prohibit an ideological, political or other noncommercial message on a sign otherwise permitted by this article.

San Diego, Cal., Mun. Code § 142.1210(a)(1) (2000)

(a) Copy Regulations

- (1) Permanent or changeable copy on signs shall contain on-premises or public interest messages only.

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(A) On-premises messages are those identifying or advertising an establishment, person, activity, goods, produces, or services located on the premises where the sign is installed.

(B) Public interest messages that are primary signs are those that are located on the following types of signs and notices;

(i) Official signs and notices, including historical markers and commemorative plaques authorized by federal, state, or local law, placed by public officials or agencies pursuant to and in accordance with federal, state, or local law for the purposes of carrying out an official duty or responsibility;

(ii) Service club and religious signs and notices containing identification of nonprofit service clubs, religious organizations, or charitable associations and containing information relating to meetings, locations, fund-raising or other nonprofit activities; and

(iii) Political and ideological signs and notices related to any federal, state, or local election issue or candidate and signs and notices unrelated to election issues or candidates but expressing ideological or political views.

(C) Public interest messages for public or private non-profit or charitable organizations may identify

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sponsors and supporters of the *signs* and notices as described in Section 142.1210(a)(1)(B). A maximum of 15 percent of the total area of a *sign* containing a public interest message shall include the name of the sponsors or supporters, description of the products, services or activities provided or engaged in by the sponsors or supporters, and recognized trademarks, logotypes or symbols customarily associated with the sponsors or supporters.

(D) The following signs are also public interest message signs but are regulated as secondary signs:

- (i) Public utility signs that are required by law;
- (ii) Directional signs; and
- (iii) Holiday decorations.

(E) The use of a cannabis leaf symbol is prohibited on any *sign*.

(2) Signs may have changeable copy, such as letters, numbers, symbols, pictorial panels, and other similar characters. Changeable copy shall be manually or mechanically changeable only in the field and not remotely or electronically changeable, except for the following signs:

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(A) Public service messages in compliance with Section 142.1220(f);

(B) Signs with automatic changing copy may be permitted with a Neighborhood Use Permit in compliance with Section 141.1105; and

(C) Automobile service station gasoline pricing signs designed in accordance with state law.

(3) Painted graphics that are murals, mosaics, or any type of graphic art that are painted on a wall or fence and do not contain copy, advertising symbols, lettering, trademarks, or other references to the premises, products, or services that are provided on the premises where the graphics are located or any other premises, are not signs for the purposes of these regulations.

When painted graphics are installed on other than a wall or fence or contain copy, advertising symbols, lettering, trademarks, or other references to the premises, products, or services, only the actual copy area is considered sign area and shall comply with these regulations.

(4) Signs that resemble traffic control signs, traffic signals or devices, or which bear the words “stop,” “go slow,” “caution,” “danger,” “warning” or other similar words, or emergency lights or signals are not permitted.

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- (5) Signs that have flashing copy or lights, and signs with stroboscopic lights, intermittent lights, rotary beacons, chasing lights, or zip lights are not permitted.
- (6) Signs with one copy message that flashes on and off, or with two or more copy messages that alternate or change, either on the same or different portions of the sign, are not permitted.
- (7) Signs with animated copy that includes action, motion, or an illusion of either, or has color changes of all or part of the sign face, may be installed provided that the animated portion of the sign does not exceed 10 square feet. The animation may be either electrical or wind powered. The light source for the sign shall be constant, and the exterior face shall not be moveable. The animated portion of a primary sign shall count toward the total sign allowance.
- (8) Freeway-oriented sign copy shall only identify establishments where transient lodging or prepared food are offered to the public, or any retail place of business engaged in supplying goods and services essential to the normal mechanical operation of automobiles, specifically including the dispensing of automotive fuel as the primary function.
- (9) On-premises signs or sign copy relating to an establishment or occupancy shall be removed no later than 30 calendar days after the date that the establishment or occupancy vacates the premises.

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(10) The owner of any sign which is otherwise allowed by this chapter may substitute noncommercial copy in lieu of any other commercial or noncommercial copy. This substitution of copy may be made without any additional approval or permitting. The purpose of this provision is to prevent any inadvertent favoring of commercial speech over noncommercial speech, or favoring of any particular noncommercial message over any other noncommercial message. This provision prevails over any more specific provision to the contrary.

Tucson, Ariz., Unified Dev. Code § 11.3.4(F) (2021)

Billboard. An off-site sign relating to a business, activity, use, or service conducted off the site or a product not sold on the site.

Winter Garden, Fla., Code of Ordinances § 102-1 (2015)

Off-premises sign means any sign relating to commodities, accommodations, services, or any other activities on premises other than the premises upon which the sign is located.

Related provision, § 102-2(b):

This chapter includes provisions for on-site signs placed on land or on a building. The regulation of on-site signs is intended to prevent excessive competition and clutter among signs and to improve and preserve traffic safety and aesthetics. The control and regulation of off-site

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signs or billboards, outdoor advertising not related to the site on which the sign is located, is deemed to be necessary to protect the character and development of the city as well as preserving traffic safety and aesthetics. Such off-site signage shall constitute a separate use confined to commercial and industrial properties.

2. Ordinances cited as drawing a location-based on/off-premises line**Cary, N.C., Land Dev. Ordinance § 9.1.3 (2020)**

Sign, Off-Site means any sign that is used to attract attention to an object, person, product, institution, organization, business, service, event, or location that is not located on the premises upon which the sign is located. This shall not include traffic, directional, or regulatory signs or notices erected by a federal, state, county, or municipal government agency.

Related provision 9.1.4(C)(9)

The following signs are specifically prohibited, unless specified otherwise in this Chapter: ... Off site signs, billboards, and pole signs.

Clinton Twp., Mich., Code of Ordinances § 1488.02(e) (2020)

“On-premises sign” means a sign displaying copy which relates to a person, activity, subject, event, or use on the parcel of property where the sign is located.

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College Station, Tex., Code of Ordinances app. A, art. VII, § 7.5(D)(11) (2023)

The following signs shall be prohibited in the City of College Station ... Off-premises signs, including commercial and non-commercial billboards.

Denver, Colo., Zoning Code § 10.10.3.2(K) (2018)

Public-Facility Identification Sign (Off-Premise)

A sign identifying a public facility which is located on a different zone lot than that containing the sign. The number, location, height, size, and illumination of such signs shall be approved by the director of planning and the Zoning Administrator or their designated representatives; however, in no case shall such sign exceed 10 feet in height or 40 square feet in area. A decision to approve such signs must be based on a favorable evaluation of their compatibility with nearby structures and signs. The installation of such identification signs shall not reduce the size or number of other signs permitted on a specific site by other provisions of Division 10.10.

Hesperia, Cal., Code of Ordinances § 16.36.020 (2017)

“Off-site sign” means a sign in accordance with this chapter which directs traffic to a business within the city but not located on the same site as the sign.

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Howell, Mich., Code of Ordinances § 7.02(a) (2019)

All signs shall be located on the premises to which the sign is accessory, unless otherwise specified herein.

Knoxville, Tenn., Code of Ordinances app. B, art. 13.2 (2021)

The following signs are prohibited in all zoning districts: ... Billboards and other off-premise signs.

Las Vegas, Nev., Unified Dev. Code § 19.12.120 (2021)

(excerpts)

A. Off-Premise Sign Characteristics

Except as otherwise provided in this Chapter, off-premise signs are to be considered primarily a specific type of land use rather than as an incidental use to an existing land use. Off-premise signs generally produce revenue to the property owner(s) as a land use as compared to on-premise signs which in themselves do not produce revenue but are incidental to a revenue-producing land use. However, because of the special characteristics of off-premise signs as compared to other types of land uses and structures, certain qualifications and requirements are set forth in connection with off-premise signs as a permitted use in certain zoning districts.

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B. Special Use Permit Required

...

C. Locational Provisions

...

D. Additional provisions

...

E. Off-Premise Sign Exclusionary Zone

...

F. Relocation of Signs Required to Be Removed for
Publicly Funded Improvements

...

G. Adjustments, Relocations and Modifications of
Signs Near Freeways

...

H. Off-Premise Signs Qualifying As City
Communication Signs

...

I. On-Premise Signs with Off-Premise Messaging

...

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Miami Beach, Fla., Code of Ordinances § 114-1 (2016)

Sign means an identification, description, illustration, or device which is affixed to or represented directly or indirectly upon land or a building or structure or object and which directs attention to a place, activity, product, person, institution, or business.

Sign, general advertising means any sign which is not an accessory sign not an accessory sign or which is not specifically limited to a special purpose by these regulations.

Related provision, § 138-5:

No general advertising sign shall be constructed, erected, used, operated or maintained in the city.

Pearland, Tex., Unified Dev. Code § 5(516) (2019)

“Sign, Off-Premise”: A sign displaying advertising copy that pertains to a business, person, organization, activity, event, place, service, or product not principally located or primarily manufactured or sold on the premises on which the sign is located.

Plano, Tex., Code of Ordinances § 6-487(19) (2021)

Except as otherwise expressly allowed by this article, the following signs and conditions are prohibited ... Offsite/premise signs (except as allowed in subsection

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3.1503.5.i of the City of Plano Comprehensive Zoning Ordinance).

Related provision, art. XII (definitions):

Sign means any device conveying either commercial or noncommercial messages or both commercial and noncommercial messages for visual communication that is used for the purpose of bringing the subject thereof to the attention of the public but not including any lawful display of merchandise. The term “sign” shall also mean and include any display of one (1) or more of the following:

- (1) Any letter, numeral, figure, emblem, picture, outline, character, spectacle delineation, announcement, trademark, or logo.
- (2) Multicolored bands, stripes, patterns, outlines, or delineations displayed for the purpose of commercial identification.
- (3) Anything specified above in part or in combination by any means whereby the same are made visible from beyond the boundaries of the lot or parcel of property on which the same are displayed for the purpose of attracting attention outdoors to make anything known.

Rapid City, S.D., Code of Ordinances § 17.50.080 (2021)

Off-Premises Sign. Any sign identifying or advertising a business, person, activity, goods, products or services

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located off the premises from where the business, person/ activity, goods, products, or services are located.

On-Premises Sign. Any sign identifying or advertising a business, person, activity, goods, products or services which are located on the premises where the sign is installed and maintained.

St. Joseph, Mich., Code of Ordinances § 25-2 (2020)

Billboard means an off-premises sign which contains a message unrelated to or not advertising a business transacted or goods sold or produced on the premises on which the sign is located.

Wauwatosa, Wis., Mun. Code § 15.14.020 (2021)

“Off premises sign” means a sign which is not appurtenant to the use of the property where the sign is located, or to a product sold or a service offered upon the property where the sign is located, and which does not identify the place of business where the sign is located as purveyor of the merchandise or services advertised upon the sign.

West Jordan, Utah, Code of Ordinances § 12-1-4 (2021)

Off-premises sign: A sign indicating the availability of goods or services at a location other than the location of the sign.

...

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On Premises Sign: A located on the property that it serves.

...

Sign: Materials placed or constructed, or light projected, that: a) conveys a message or image; and b) is used to inform or attract the attention of the public. Some examples of “signs” are materials or lights meeting the definition of the preceding sentence and which are commonly referred to as signs, placards, A-boards, posters, billboards, murals, diagrams, banners, flags or projected slides, images or holograms, and also includes the structure, supports, lighting system attachments and other features of the “sign”. The scope of the term “sign” does not depend on the content of the message or image conveyed.

Wyckoff Twp., N.J., Code § 186-28(C)(1) (2020)

No sign shall be erected except on the premises of the use or activity to which such sign refers or which it identifies or advertises, i.e., no off-premises sign. Except, in the B-1A Zone, when an ingress and egress driveway is eliminated from any lot where a business use or activity is conducted at the premises as a result of the implementation of the interior block parking plan, only one freestanding, directory ground sign, listing all business uses or activities being conducted at the premises on any of said lots, is permitted to be erected on the nearest lot, with an ingress and egress driveway within the same block which is part of the interior block parking plan. There shall

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be no other directory sign permitted on any other lot. The freestanding, directory ground sign shall be limited in area to 15 square feet, limited in height to six feet from the ground level and set back at least five feet from the property line. The determination of the nearest lot within the block shall be made by the Township Engineer of the Township of Wyckoff. When an ingress and egress driveway is eliminated from a lot where a business use or activity is conducted on the premises, said lot is permitted to have at the premises one freestanding, directional sign limited in area to three square feet, limited in height to four feet from the ground level and set back at least five feet from the property line.

Zumbrota, Minn., Zoning Ordinance § 20.3(B) (2024)

All permanent off-site freestanding signs shall require Conditional Use Permits.

3. Ordinances cited as drawing the line by reference to commercial speech**Bentonville, Ark., Mun. Code app. A, art. 801, § 801.18 (2026)**

“Offsite commercial message means a message that advertises commercial products, accommodations, services or activities not provided in or on the property or premises upon which it is located. The on-site/off-site distinction does not apply to non-commercial messages.”

*Appendix I***Bismarck, N.D., Code of Ordinances § 14-03.1-02.1 (2021)**

Off-Premise Advertising Sign: A ground sign, as defined in the most recent adoption of the International Building Code (IBC)[], that may advertise goods or services that are not associated with the use of the premises. Off-premise advertising signs may also advertise on-premise goods or services. An off-premise advertising sign may be static, digital, illuminated, non-illuminated or any combination thereof where permitted.

On-Premise Advertising Sign: A sign advertising the business, person, service or major product of the building or land upon which it is located, or identifying the premises or goods manufactured, produced, or services rendered thereon. On-premise does not necessarily imply that the sign and its referent share a single lot or parcel, but a set of contiguous lots or parcels that function as a whole use may be considered a premise for the purposes of this definition.

Burlington, Iowa, Code of Ordinances § 170.75.101(25) (2021)

Off-premises Sign - A commercial sign that advertises goods, services, or another business that are not sold or operated on the premises.

Cincinnati, Ohio, Mun. Code § 1427-03-O, O1 (2006)

Off-site sign means a Commercial Sign (i) that proposes or promotes a commercial transaction to be

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conducted on a premises other than the premises on which the sign is located; or (ii) directs attention to a good, product, commodity, business, service, event, or other object that serves as the basis of a commercial transaction that is not conducted on the same premises as the premises on which the sign is located.

On-site sign means (i) a Noncommercial Sign; (ii) a Commercial Sign that proposes or promotes a commercial transaction to be conducted on the same premises as the premises on which the sign is located; or (iii) a Commercial Sign that directs attention to a good, product, commodity, business, service, event, or other object that serves as the basis of a commercial transaction conducted on the same premises as the premises on which the sign is located.

Related Provision: § 895-1-0

Outdoor advertising sign means either of the following: (i) a sign for which its owner or operator receives, or is entitled to receive, rent or other consideration from another person or entity in exchange for the use of the sign, including for the placement of a message on the sign; or (ii) a sign that is offered or made available by its owner or operator for use by another person or entity, including for the placement of a message on the sign, in exchange for rent or other consideration.

*Appendix I***Grand Rapids, Mich., Code of Ordinances § 5.15.04(B)(3)
(2020)**

Other than permitted off-premises signs, a sign containing a commercial message not pertaining to a use on the subject lot is prohibited, and no sign permit shall be approved until a principal use has been established on the property.

**Lake Mary, Fla., Code of Ordinances ch. 155, app. I,
§ 3 (2021)**

Billboard. A non-point-of-sale commercial sign which advertises a product, service, business, organization, event, person, place, or thing.

Off-Premises Sign. A sign identifying an activity which is not on the premises where the sign is located or products or services which are not available on the premises where the sign is located.

On-Premises Sign. A sign (1) identifying an activity conducted or products or services available on the premises where the sign is located, or (2) displaying a noncommercial message or (3) any combination of the first two.

Related provision, § 5(B)(18) (excerpt):

It shall be unlawful to erect or maintain . . . Off-premises signs.

*Appendix I***Madison, Wis., Code of Ordinances § 31.03 (2021)**

Advertising Sign. A sign containing a commercial message directing attention to a business, commodity, service, or entertainment, not related to the premises at which the sign is located, or directing attention to a business, commodity, service or entertainment conducted, sold or offered elsewhere than on the premises where the sign is located. Signs on City-sponsored bicycle-sharing facilities and the bicycles provided as part of a city-sponsored bicycle-sharing program located in the right-of-way or on other City lands in compliance with Sec. 10.33 are not advertising signs as defined herein and are not regulated by this ordinance.

Off-Premise Directional Sign. A commercial sign displayed on the ground, designed to guide or direct the public to a business, service or entertainment activity.

Monroe Cnty., Fla., Land Dev. Code § 142-2 (2021)

Off-premises commercial advertising means a nonaccessory billboard or sign which directs attention to a business, commodity, service, or attraction that is sold, offered or existing elsewhere than upon the same lot where such sign is displayed.”

Off-premises sign means a nonaccessory billboard or sign that displays offsite commercial advertising. When in the right-of-way of or visible from U.S. 1, off-premises signs are required to be registered with the Florida

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Department of Transportation (FDOT) pursuant to F.S. Chapter 479.

Murfreesboro, Tenn., Code of Ordinances § 25.2-25(D) (2026)

The following types and uses of temporary signs are specifically prohibited:

- (1) Signs which are not expressly permitted by this chapter.

...

- (3) Off premise, commercial temporary signs except temporary directional signs as conditionally allowable under Code § 25.2-25(E)(2).

Overland Park, Kan., Unified Dev. Ordinance § 18.440.020 (2021)

The following signs are prohibited unless otherwise specifically provided for in this Chapter:

...

- A. Off-Site Commercial Signs. Exception: Billboards allowed by Special User Permit by 18.440.120.B, off-site commercial signs allowed by 18.440.070.B, and off-site temporary signs allowed by 18.440.130.G.

...

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Paynesville, Minn., Code of Ordinances § 36-10 (2020)

Off-premises sign means a commercial speech sign which directs the attention of the public to a business, activity conducted or product sold or offered at a location not on the same lot where such sign is located. For purposes of this section, easements and other appurtenances shall be considered to be outside of such lot and any sign located or proposed to be located in an easement or other appurtenance shall be considered to be off-premises signs.

On-premises signs means signs which identify or advertise an establishment, person, activity, goods, products for services located on the premises where the sign is installed.

Troy, Mich., Sign Ordinance § 85.01.03 (2018)

Off Premise Sign: A sign that may include a commercial message, and directs attention to any business, profession, product, activity, commodity, or service offered, sold, manufactured or furnished on property or premises other than that upon which the sign is located.